THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

SEPTEMBER 2004 – VOLUME 13, ISSUE 3

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

Pension Division - Staff Changes

John Khing Shan accepted the position of Pension Officer, Gino Marandola accepted the position of Senior Manager, Operations and Eva Lungu accepted the position of Administrative Pension Analyst in the Pension Plans Branch.

Joey Shiner has accepted the position of Compliance Assistant and Barbara Sisnett has accepted the position of Administrative Assistant in the Administrative and Operational Support Unit of the Pension Plans Branch.

Partial Wind Ups and Surplus Distribution

The Supreme Court of Canada released its decision in *Monsanto Canada Inc. v. Superintendent of Financial Services* on July 29, 2004 (see also p. 7). As part of an ongoing effort to update affected stakeholders, the following notice was posted on the FSCO website at: www.fsco.gov.on.ca on August 30, 2004.

Partial Wind Ups Post-Monsanto

The current *Ontario Pension Benefits Act* (PBA), which came into force on January 1, 1988, requires the distribution of pension plan surplus on both full and partial wind up of a pension plan. This requirement was confirmed by the Supreme Court of Canada in its decision in *Monsanto Canada Inc. v. Superintendent of Financial Services*, released on July 29, 2004.

What the Decision Means

In Ontario, all pension plans that undertake a partial plan wind up must distribute any surplus that relates to the partial wind up group as part of the partial wind up process, as required by subsection 70(6) and the definition of "partial wind up" under section 1 of the PBA. The actual treatment of the surplus, including any surplus distribution, must be in accordance with the terms of the pension plan and the requirements of the PBA and Regulation 909 made under the PBA.

Current Status of Partial Wind Up Reports Already Filed

- Where the report stated there was no surplus at the effective date of the partial wind up, the filing was complete and any outstanding questions were resolved, Superintendent approval of the partial wind up report was granted. With the distribution of the assets, the partial wind up is complete.
- Where the report indicated a surplus at the effective date of the partial wind up and approval of the partial wind up report was granted, with the distribution of the assets, the partial wind up is complete.
- Where the report indicated a surplus at the effective date of the partial wind up and no proposal for the distribution of the surplus was filed or approved, the Superintendent did not approve the partial wind up report, but provided approval under subsection 70(3) of the PBA to distribute the basic benefits once all benefit-related issues were resolved. Further filings to update the partial wind up report and deal with the surplus related to the partial wind up group are required at this time. Letters providing details of the filings required will be mailed

to the affected plan administrators by August 29, 2004. Any affected plan administrator who does not receive a letter should contact FSCO as provided below.

- Where a hearing before the Financial Services Tribunal in respect of a partial wind up has been on hold pending the outcome of the *Monsanto* appeal, the hearing may now proceed at the request of a party to the hearing.

Current Status of Related Pension Policies

In the period since the Supreme Court decided to hear the *Monsanto* appeal, FSCO has been reviewing all pension policies related to wind up, partial wind up and surplus. A list indicating the status of the policy review process will be available shortly. The first new policy to be issued will be S900-511, Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan.

Contact Information

If you have questions or concerns, please contact:

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Technical Consultant, Pension Plans Branch
Financial Services Commission of Ontario
5160 Yonge Street, 4th Floor
Box 85
North York ON M2N 6L9

Telephone: 416-226-7788
Toll Free: 1-800-668-0128, ext. 7788
Email: gardern@fsco.gov.on.ca

NOTE: It is anticipated that this document will be updated from time to time as FSCO completes its analysis of the implications of the Supreme Court of Canada decision

Multi-Employer Pension Plan (MEPP) Consultation Committee

FSCO's Multi-Employer Pension Plan (MEPP) Consultation Committee held its first meeting on June 24, 2004. The MEPP Consultation Committee was established to provide confidential advice regarding multi-employer pension plans to the Deputy Superintendent, Pensions.

Members of the Committee are:

Randy Bauslaugh
Susan Bird
Brian Foote
Michael Gallagher
Bryan Kogut
Thomas Levy
Mark Zigler (Chair)

FSCO Pension Advisory Committees - Membership as of September 1, 2004

Legal Advisory Committee

Greig, Louise
Helbronner, Caroline
Lokan, Andrew
O'Reilly, Hugh (VC)
Padfield, Michael
Philpott, Susan
Pollock, Bruce
Rowbotham, Mark
Rowe, Kevin
Whiston, Bethune (C)
Winfield, Gregory

Actuarial Advisory Committee

Benjamin, Gavin
Cohen, Lorne (C)
DiRisio, Wendy
Hart, David
Hutchinson, Laurie (VC)
Levy, Thomas
Newman, Laura
Peng, Peter
Pitcher, Clare
Robertson, Marcus
Young, Wilson

Investment Advisory Committee

Andrews, Doug
Butera, Michael
Grantier, Bruce (C)
Mercier, Eileen
Mills, Daniel
Pennal, Peter
Pond, Robin (VC)
Schaefer, Klaus

Accounting and Assurance Advisory Committee

Besler, Jason
Eigl, Charlie (C)
French, Mike
Preis, Katherine
Racanelli, Nick
Wade, Jack
Walker, Albert (VC)

(C) denotes Chair (VC) denotes Vice-Chair

COURT/PROSECUTION MATTERS

The information set out below is current to August 5, 2004.

Court Matters

I. Monsanto

The Court of Appeal held that subsection 70(6) of the Pensions Benefits Act (PBA) requires a distribution of surplus assets on partial wind up. On June 5, 2003, the Supreme Court of Canada granted leave to Monsanto Canada Inc. and the Association of Canadian Pension Management (ACPM) to appeal the Court of Appeal's decision. Five parties were granted intervener status in the appeal: National Trust Company; a group of former members from the National Trust Plan and one former member of the Monsanto Plan; the federal Ministry of the Attorney General representing the Office of the Superintendent of Financial Institutions; Nicole Lacroix, representing a group that has started a class action over pension surplus against Canada Mortgage & Housing Corporation; and the Canadian Labour Congress/Ontario Federation of Labour. The appeal was heard on February 16, 2004.

On July 29, 2004, the Supreme Court unanimously dismissed the appeal. The Supreme Court held that the correctness standard of review applies to the Financial Services Tribunal when it interprets provisions of the PBA that are a pure question of law. The Supreme Court also held that subsection 70(6) of the PBA requires a distribution of surplus assets on partial wind up.

II. Ontario Teachers' Pension Plan Board (Anne Stairs)

In a decision issued on June 18, 2002, the Divisional Court ordered the Superintendent to issue an order directing the Ontario Teachers' Pension Plan Board to pay Ms. Stairs a pre-retirement death benefit pursuant to a separation agreement, subject to section 51 of the PBA. On September 3, 2002, the Court heard a motion by the Board to vary the decision insofar as quantum is concerned. The Court's decision on the motion was released on December 5, 2002. The Court also determined that the valuation date for the purposes of the calculation of quantum was the date of the divorce. The Court held that Ms. Stairs was entitled to not more than 50% of the pre-1987 death benefit plus 50% of the post-1986 death benefits to the date of divorce. The Court issued a declaration in respect of the pre-1987 amounts and directed the Superintendent to issue an order in respect of the post-1986 amounts. Ms. Stairs was awarded $40,000 plus disbursements in costs.

The Board applied for and obtained leave from the Court of Appeal to appeal the decision on quantum. Ms. Stairs applied for and obtained leave from the Court of Appeal to cross appeal the decision on quantum. The appeals were heard in the Court of Appeal on November 10, 2003. The Court released its decision on

February 10, 2004, holding that Ms. Stairs was entitled to pre-retirement death benefits for both the pre-1987 and post-1986 periods of employment. However, the Superintendent only had jurisdiction to order the post-1986 benefits to be paid because neither the PBA nor the Plan provided for pre-1987 pre-retirement death benefits. The Court held that the valuation date was the date of death (based on the "wait and see" method employed with respect to the pension in the separation agreement) and that the 50% rule in subsection 51(2) of the PBA applied to the pre-retirement death benefits, not the entire pension benefit. The Court found that Ms. Stairs' interest was not derivative of the current spouse's interest and was therefore to be calculated based on her date of birth and was to continue until her date of death. Finally, the Court awarded costs to Ms. Stairs in the amount of $25,000 payable on a partial indemnity basis by the Board. No application for leave to appeal to the Supreme Court of Canada has been filed, so the Court of Appeal decision is now final.

III. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan. The letter giving the consent stated that anyone dissatisfied with the consent could request a hearing before the Financial Services Tribunal (FST). A hearing was requested.

The FST held the hearing on January 15 to17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). One panel member dissented, finding that there was jurisdiction based on the HOOPP and other cases and on a purposive reading of the PBA. The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

The Salaried Plan members have appealed the FST's decision to the Divisional Court. The appeal was set to be heard on January 29 and 30, 2004, but was adjourned to September 13 and 14, 2004.

IV. Marshall-Barwick Limited

The FST held a hearing in this matter on September 9, 2002. The issue at this hearing was whether a Notice of Proposal proposing to refuse to approve the partial wind up report (because a member allegedly terminated for cause was not included in the partial wind up group) should be upheld. The FST released its decision on November 29, 2002, upholding the Superintendent's Notice of Proposal and directing the Administrator to file a revised wind up report that includes, in the partial

wind up group, the member terminated for cause.

The company has appealed the FST's decision to the Divisional Court. No date has been set for hearing the appeal.

V. Plumbers Local 463 Pension Plan

The board of trustees of the Plumbers Local 463 Pension Plan has filed an application for judicial review in respect of an order issued by the Superintendent on October 6, 2003 requiring the trustees to pay the cost of an examination of the Plan out of the fund for the Plan. No hearing date has been set.

VI. Donohue Forest Products Inc.

The spouse of a deceased Plan member requested a hearing before the FST with respect to a Notice of Proposal issued by the Superintendent on November 8, 2002, which refused to order the Plan Administrator to recalculate the pre-retirement death benefit owing. The hearing took place July 2, 2003 and September 22 and 25, 2003. The FST released its decision on January 9, 2004, finding that the Notice of Proposal should be affirmed. The applicant has appealed the FST's decision to the Divisional Court. The appeal is scheduled to be heard on November 10, 2004.

VII. Kerry (Canada) Inc.

The FST conducted a hearing that arose from a Notice of Proposal in which the Superintendent of Financial Services proposed to order Kerry (Canada) Inc. to reimburse certain expenses paid from the pension fund and to amend its Pension Plan so that only expenses for the exclusive benefit of the members could be paid from the fund.

The FST released its decision on March 4, 2004. The FST held that certain expenses were to be reimbursed to the fund, while certain other expenses did not have to be reimbursed as they were incurred for the exclusive benefit of the members. The FST also held that there was no jurisdiction under the PBA for the Superintendent to order a plan amended.

A group of former members comprising the DCA Employees Pension Committee for the Pension Plan for the Employees of Kerry (Canada) Inc. has appealed the FST's decision. No date has been set for the hearing of the appeal.

Prosecution Matters

I. Mimik Industries Inc.

Charges were laid against the employer and the President of the employer for failing to remit required contributions to the Pension Plan. The first appearance was on June 13, 2002. The trial which was initially set for November 10, 2003 was adjourned on consent to May 11 and 18, 2004. On May 11, 2004, the employer pleaded guilty to one count of failing to pay the amount required to fund the benefits payable under the employees' Pension Plan. A fine in the sum of $3,420 was imposed and the Court made a restitution order in the sum of $342,000. The charges against the President were withdrawn.

II. Microcolor Dispersions Inc.

Charges were laid against the corporation and its two directors for non-remittance of employer contributions. The first appearance was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004. On May 10, 2004, all charges against the directors and the corporation were withdrawn.

III. John Parker

John Parker was a director of Microcolor Dispersions Inc. Charges were laid against Microcolor and its two directors, including Parker, for non-remittance of contributions. The first appearance on the charges against Parker was on September 30, 2002. A pre-trial conference was held on January 13, 2003. The trial was originally set for September 19 and 22, 2003, but was adjourned to May 10 and 11, 2004. On May 10, 2004, all charges were withdrawn.

IV. Rosko Forestry Operations Ltd.

Charges were laid against the employer and a corporate officer for the employer for failing to remit employer and employee contributions and for breach of the deemed statutory trust covering employee contributions. The first appearance in respect of the breach of trust charges was on May 22, 2003 in Haileybury, Ontario. The first appearance for the non-remittance charges was on June 2, 2003 in London, Ontario at which time the non-remittance charges were moved to Haileybury to be heard with the breach of trust charges. A pre-trial conference was held on September 8, 2003. On April 29, 2004, the employer pleaded guilty to one count of failing to remit contributions and a fine of $7,500 inclusive of victim fine surcharge was levied. All other charges against the employer and all the charges against the corporate officer were withdrawn.

V. Meto Canada Inc.

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 1999, 2000, 2001 and 2002 with respect to the Meto Canada Inc. Employees Pension Plan. The first appearance was on April 6, 2004 when the matter was adjourned to May 4, 2004. On May 4, 2004, the corporation pleaded guilty to all four counts of failing to file a financial statement for the relevant fiscal

years. The corporation was fined $4,500, plus a $1,110 victim fine surcharge.

VI. Mutual/Hadwen Imaging Technologies Inc.

Charges were laid against the employer, successor employer and two corporate officers for the employer and successor employer for failing to remit employer and employee contributions. The first appearance was on April 14, 2004, when trail dates were set for January 17 to 21, 2005.

VII. Cleaver-Books of Canada Ltd.

Charges were laid against the corporation for failing to file a financial statement for the fiscal years ending 2000, 2001 and 2002 with respect to the Pension Plan for Hourly Employees of Cleaver-Brooks of Canada. The first appearance was held on July 13, when the matter was adjourned to August 11, 2004.

LEGISLATIVE CHANGES / REGULATORY POLICIES

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Conversion
INDEX NO.:	C200-101
TITLE:	Conversion of a Plan from Defined Benefit to Defined Contribution - PBA ss. 14(1)(c), 26(1), 41, 42, 48 and 63(7) - Regulation 909 s. 19(1)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO Website (May 2004)
EFFECTIVE DATE:	June 1, 2004
REPLACES:	C200-100

Note: Where this policy conflicts with the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 ("FSCO Act"), *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Defined Benefit to Defined Contribution Plan Conversion

The conversion of a defined benefit plan to a defined contribution plan alters the fundamental pension agreement between the employer and the plan members. The PBA does not expressly address such plan conversions. It is recognized that plan sponsors are entitled to change the basic structure of a pension plan for future benefits. However, plan members should receive full information with respect to the conversion and the options available to them. While each case presents its own circumstances, the following guidelines are set out to assist such conversions. Plan conversions are effected by means of a plan amendment. Generally, such an amendment will be registered only if it complies with these guidelines The guidelines deal with the conversion of accrued benefits.

1. Application of this Policy

This policy is directed at plan conversions where the plan is changed from a defined benefit to a defined contribution plan, the members' benefits that have accrued up to the date of conversion are commuted and the commuted value is credited toward the members' accounts under the subsequent defined contribution plan.

2. Means of Effecting Conversion

The conversion is effected by a plan amendment, for which notice must be given prior to implementation in accordance with subsection 26(1) of the PBA. The effective date of the plan amendment may not be earlier than the date of the notice.

As soon as possible after the members' entitlements and commuted values under the defined benefit plan have been determined, each member being affected by the conversion must be given a Statement of Benefits and Options. This Statement must contain at a minimum the information set out in Schedule A.

3. Option of Members

All members of the plan to whom the conversion applies must be given the option of preserving their accrued benefits in the form of a defined benefit. If no election is made, the member is considered not to have elected to convert his or her accrued benefits to a defined contribution form.

If the plan sponsor elects to purchase an annuity for the members who choose to preserve their benefits in the form of a defined benefit, the annuity must comply with all requirements of the plan and the PBA, such as early retirement provisions (section 41), transfer rights (section 42) and pre-retirement death benefits (section 48).

4. Minimum Commuted Value

The commuted value of the accrued benefits as of the date of conversion must be determined for each member. The method used to determine the minimum commuted values must comply with the requirements of subsection 19(1) of the Regulation.

The value of ancillary benefits (such as bridge benefits or early retirement benefits for which the member has met all eligibility requirements under the pension plan as of the date of conversion) must be taken into account in determining the commuted value of the member's accrued benefits in order to ensure compliance with clause 14(1)(c) of the PBA.

In the case of a contributory pre-1987 accrued benefit, the commuted value must not be less than the member's required contributions plus interest.

Please also refer to Salary Projections in section 5 of this policy below.

5. Salary Projections

Where a plan is structured such that benefits are related to final earnings or best earnings of a member, a projection of salary increases must be taken into account in calculating the commuted

value of the accrued benefits unless the plan clearly provides that salary projection need not be taken into account on a plan conversion. However, the probability of termination may also be recognized in the determination of the commuted values. FSCO staff may also approve an approximate method for the determination of the commuted value which will produce a reasonably similar result.

If the plan is amended to freeze the salary level at which the accrued benefits are determined as of the date of conversion, notice of this amendment to freeze the salary level must be included as part of the notice of amendment given to all affected plan members.

6. Application of the 50% Rule and Treatment of the Excess

In a contributory plan, the amount by which the member's contributions plus interest exceed 50% of the commuted value of the pension as of the date of conversion must be added to the member's defined contribution account for:

- all benefits which accrued from January 1, 1987 to the date of conversion, and pre-1987 accrued benefits where the 50% rule applies to such benefits.

The plan sponsor may determine that this excess amount either be: retained in the member's required contribution account, in which case the amount is treated in the same manner as the other monies in the accounts, or treated as an additional voluntary contribution.

The amendment effecting the conversion must specify how such excess amounts are to be treated. If the excess is deemed to be an additional voluntary contribution, the plan must be amended to so allow and an application must be made to the Superintendent under subsection 63(7) of the PBA for a notional refund to the member of what had, before the amendment, constituted required member contributions.

7. Amounts in Excess of the Income Tax Act Limits

In accordance with section 21.1 of the Regulation, a member who elects to convert his or her defined benefits to defined contribution benefits is entitled to require the administrator to pay to the member that portion of the amount of the commuted value of defined benefits that exceeds the maximum transfer limit prescribed under the *Income Tax Act* (Canada) for such a conversion.

8. Vesting

Conversion of the plan does not affect the date on which vesting of benefits occurs. The defined contribution account is subject to the vesting rules of the plan, and the member must be informed that the vesting rules of the plan continue to apply.

9. Refunds

Where, in connection with the conversion, the plan is to be amended to provide for a refund of a member's contributions, application for a refund of contributions to members must be

made to the Superintendent under subsection 63(7) of the PBA.

10. Funding

If the assets of the plan are not sufficient to cover the commuted value of the benefits that are to be converted and the annuities purchased pursuant to the conversion, the sponsor must contribute the shortfall to the plan in a lump sum. Furthermore, the sponsor must, if necessary, make a lump sum payment to ensure that the solvency ratio (the ratio of market value of assets to the solvency liabilities) of the plan in respect of the defined benefit portion of the plan that remains after the conversion is not less than the plan's solvency ratio before the conversion was implemented but need not exceed 1.0.

11. Conversion Report

A conversion report is required to be filed at the time the plan amendment is filed.

SCHEDULE A

STATEMENT OF BENEFITS AND OPTIONS FOR MEMBERS ON PLAN CONVERSION

The following information must be included in the Statement of Benefits and Options given to each member upon determination of the member's entitlements and commuted values from the defined benefit plan:

1. A statement that the member may elect not to convert the accrued pension and instead retain all entitlements under the existing defined benefit plan.
2. If the member elects to convert the accrued pension, the amount of the accrued pension and the commuted value that will be credited to the member's defined contribution account must include the amount and value of:
    - ancillary benefits for which the member has satisfied all eligibility requirements; and
    - any benefit improvement granted in conjunction with the conversion.
3. The amount of any excess member contributions resulting from application of the 50% rule and the treatment of such contributions.
4. A statement that the member will no longer be entitled to the benefits under the defined benefit plan, and that the member's pension benefit will depend on the earnings of the defined contribution plan and the annuity rates in effect at the time the member has terminated employment and chooses to

annuitize the benefit, except with respect to benefits not converted.

5. Identification of ancillary benefits for which the member has not met the eligibility requirements, and that these ancillary benefits will no longer be offered in the defined contribution plan.
6. A statement that the defined contribution account is subject to the vesting rules of the plan, and specification of the amount that is vested as of the date of the conversion.

SUPERINTENDENT OF FINACIAL SERVICES

Administrator Appointments - Section 71 of the PBA

1. Cowan Wright Beauchamp as the Administrator of the Pension Plan for the Employees of Mimik Industries Ltd. (Registration No. 287490), effective immediately.
   DATED at Toronto, Ontario, this 22nd day of June, 2004.

2. Standard Life as the Administrator of the Erno Manufacturing Employees Pension Plan (Registration No. 0306449), effective immediately.
   DATED at Toronto, Ontario, this 18th day of June, 2004.

3. PricewaterhouseCoopers Inc. as the Administrator of the Hoskins Alloys of Canada Limited Employees' Retirement Plan (Registration No. 0557868), effective immediately.
   DATED at Toronto, Ontario, this 7th day of May, 2004.

4. Morneau Sobeco as the Administrator of the Proboard Ltd. Employees Pension Plan (Registration No. 593814), effective immediately.
   DATED at Toronto, Ontario, this 3rd day of May, 2004.

5. Morneau Sobeco as the Administrator of the Bargaining Unit Pension Plan for Members of United Steelworkers of America (Registration No. 988444), effective immediately.
   DATED at Toronto, Ontario, this 26th day of March, 2004.

6. Morneau Sobeco as the Administrator of the Retirement Plan for Salaried Employees of Canadian Drawn Steel Company Inc. (Registration No. 988196), effective immediately.
   DATED at Toronto, Ontario, this 26th day of March, 2004.

7. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Intermetco Senior Management Employees of PSC Metals Inc. (Registration No. 687608), effective immediately.
   DATED at Toronto, Ontario, this 19th day of March, 2004.

8. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Members of USWA Locals 6920 of PSC Metals Inc. (Registration No. 474932), effective immediately.
   DATED at Toronto, Ontario, this 19th day of March, 2004.

9. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Members of USWA Locals 6098 of PSC Metals Inc. (Registration No. 347047), effective immediately.
   DATED at Toronto, Ontario, this 19th day of March, 2004.

10. PricewaterhouseCoopers Inc. as the Administrator of the Pension Plan for Former I.W.& S. Salaried Employees of PSC Metals Inc. (Registration No. 481937), effective immediately.
    DATED at Toronto, Ontario, this 19th day of March, 2004.

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995 (the "Pension Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: David R. Kearney
Administrator of the Pension Plan

AND TO: **Fantom Technologies Inc.**
PO Box 1004
Welland ON L3B 5S1
Attention: Norm Wotherspoon
Treasurer
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto ON M5H 1V8
Attention: Catherine Hristow
Vice President
Interim Receiver and Trustee in Bankruptcy for Fantom Technologies Inc.

AND TO: **The United Steelworkers of America Local 6444, District 6**
234 Eglinton Avenue East
Toronto ON M4P 1K5
Attention: Robert Heally and Brian Greenaway
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995, be wound up in full for those members who ceased to be employed effective between November 20, 2000 and October 5, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**

6. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810 (the "Pension Plan");**

TO:	**Morneau Sobeco** 895 Don Mills Road, Suite 700 One Morneau Sobeco Centre Toronto ON M3C 1W3
Attention:	David R. Kearney **Administrator of the Pension Plan**
AND TO:	**Fantom Technologies Inc.** PO Box 1004 Welland ON L3B 5S1
Attention:	Norm Wotherspoon Treasurer **Employer**
AND TO:	**PricewaterhouseCoopers Inc.** 145 King Street West Toronto ON M5H 1V8
Attention:	Catherine Hristow Vice President **Interim Receiver and Trustee in Bankruptcy for Fantom Technologies Inc.**

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810, be wound up in full for those members who ceased to be employed effective between October 12, 2001 and March 22, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**
6. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148 (the "Pension Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: Al Kiel
Partner
Administrator of the Pension Plan

AND TO: **General Publishing Co. Limited**
895 Don Mills Road
400-2 Park Centre
Toronto ON M3C 1W3
Attention: Mary Hainey
Manager Human Resources
Employer

AND TO: **Deloitte & Touche Inc.**
79 Wellington Street West
Maritime Life Tower
Toronto Dominion Centre, P.O. Box 29
Toronto ON M5K 1B9
Attention: Paul Denton
Director, Financial Advisory Services
Trustee in Bankruptcy for General Publishing Co. Limited

AND TO: **Graphic Communications International Union Local 500M**
324 Prince Edward Drive
Suite 10
Toronto ON M8Y 3Z5
Attention: John Bickford
Office Manager
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148, be wound up in full for those members who ceased to be employed effective between April 30, 2002 and August 19, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer**

or as a result of the reorganization of the business of the Employer.

5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**
6. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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5160 Yonge Street
14th Floor
Toronto, Ontario
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DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146 (the "Pension Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: Bethune Whiston
Principal
Administrator of the Pension Plan

AND TO: **Maksteel Inc.**
7615 Torbram Road
Mississauga ON L4T 4A8
Attention: Jerry Sauer
Manager Human Resources
Employer

AND TO: **Ernst & Young Inc.**
222 Bay Street, 16th Floor
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Sharon Hamilton
Manager
Interim Receiver for Maksteel Inc.

AND TO: **United Steelworkers of America Local 5958**
1031 Barton Street East
Hamilton ON L8L 3E3
Attention: Bryan Adamczyk
Staff Representative
Union

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146, be wound up in full for those members who ceased to be employed effective between July 10, 2001 and December 14, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**

6. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

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IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Agnew Group Inc. Retirement Plan, Registration No. 0552802 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
c/o McMillan Binch LLP
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3
Attention: Susan Nickerson
Applicant

NOTICE OF PROPOSAL

WHEREAS Agnew Group Inc., sponsored the Plan which provided a non- contributory defined contribution benefit for its employees;

AND WHEREAS Royal Bank of Canada appointed PricewaterhouseCoopers Inc. as Receiver and Manager of Agnew Group Inc. effective January 12, 1996;

AND WHEREAS Royal Bank of Canada is the Secured Creditor of Agnew Group Inc. as stipulated in the principal security documents granted by Agnew Group Inc. as follows:

1. a $60,000,000 Debenture dated July 6, 1990, together with a pledge of the said debenture;
2. a General Security Agreement in the Bank's form 924 dated July 6, 1990;
3. a general assignment pursuant to section 427 of the *Bank Act* in the Bank's form 687 dated October 29, 1993; and
4. a Trust Deed of Hypothec, Mortgage and Pledge dated December 1991 and Debenture No. 1 dated December 2, 1991 in the amount of $60,000,000, together with a pledge of Agnew Quebec Debenture dated December 2, 1991.

AND WHEREAS PricewaterhouseCoopers Inc. in its capacity Receiver and Manager of the assets of Agnew Group Inc. is entitled to receive any surplus funds payable to Agnew Group Inc. (the "Employer") under the Plan;

AND WHEREAS PricewaterhouseCoopers Inc. made an application to the Superintendent of Financial Services for the consent of the Superintendent to payment of money out of the Plan that is surplus dated May 1, 2003.

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Plan to PricewaterhouseCoopers Inc. in the amount of $505,430 (representing 35% of the Wind Up Surplus in the Plan of $1,446,787 determined as at May 1, 2003), plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits including members' share of the negotiated surplus and any other payments to which the members, former members, and any other persons are entitled under the Plan have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **The Plan was wound up, effective January 12, 1996.**
2. **As at May 1, 2003, the surplus in the Plan was estimated at $1,446,787.**
3. **There is an Order of the Ontario Superior Court of Justice dated May 12, 2003, that the Plan provides for payment of surplus, within the meaning of subsection 79(3) of the Act to the Applicant.**
4. **The Employer became bankrupt effective January 12, 1996.**
5. **PricewaterhouseCoopers Inc. in its capacity as Receiver and Manager of the assets of the Employer is entitled to receive any surplus funds payable to the Employer under the Plan.**
6. **The application discloses that by written agreement made by PricewaterhouseCoopers Inc. and 85% of the active members and other members (as defined in the application) and 88% of the former members and other persons entitled to payments, the surplus in the Plan as at May 1, 2003, is to be distributed:**
   a) 35.0% to the Applicant; and
   b) 65.0% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
7. **PricewaterhouseCoopers Inc. has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 35.0% of the surplus as at May 1, 2003, plus investment earnings to the date of payment.**
8. **The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.**
9. **Such further and other reasons as come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 6th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pension Division

cc: Al Kiel, Morneau Sobeco

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Restated Pension Plan for Employees of Downey Building Materials Limited, Registration No. 469718;**

TO: **Downey Building Materials Limited**
539 Great Northern Road
Sault Ste. Marie, Ontario
P6B 5A1

Attention: A. Melville
Accountant & Director
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the The Restated Pension Plan for Employees of Downey Building Materials Limited, Registration No. 469718 (the "Plan"), to Downey Building Materials Limited in the amount of $90,152.57 as at October 2, 2002, plus investment earnings thereon to the date of payment, less all expenses related to the plan wind up and the surplus application.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement as set out in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **Downey Building Materials Limited is the Employer as defined in the Plan (the "Employer").**
2. **The Plan was wound up, effective October 2, 2002.**
3. **As at October 2, 2002, the surplus in the Plan was estimated at $150,254.29.**
4. **The Plan provides for payment of surplus to the Employer on the wind up of the Plan.**
5. **The application discloses that by written agreement made by the Employer and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:**
   a) **60% to the Employer; and**
   b) **40% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.**
6. **The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 60% of the surplus in the Plan plus investment earnings thereon to the date of payment less all expenses related to the plan wind up and the surplus application of the Plan.**

7. **The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the Act and with clauses 8(1)(b), 28(5.1) and 28(6) of the Regulation.**
8. **Such further and other reasons as come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 8th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pensions

cc: T. Ian McLeod, HR-on-Demand Inc.

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Ryancon, Registration Number 298430 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Appointed Administrator

AND TO: **Ryancon**
144 Sharer Road
Vaughan ON L4L 8P4
Attention: John D. Hains
Chief Financial Officer
Employer

AND TO: **BDO Dunwoody Limited**
33 City Centre Drive, Suite 680
Mississauga ON L5B 2N5
Attention: Mr. Darryl McConnell
Senior Manager
Trustee in Bankruptcy/ Receiver and Manager

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective March 31, 2003 through June 30, 2003.

REASONS:

1. **Cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the Act.**
2. **Failure of the Employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.**
4. **A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer, pursuant to clause 69(1)(d) of the Act.**
5. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

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Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416-226-7752, toll free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 13th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Dyment Limited, Registration No. 0242735;**

TO: **Dyment Limited**
1235 Bay Street
Suite 400
Toronto ON M5R 3K4
Attention: Mr. E. A. Campbell
Controller
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan for Employees of Dyment Limited, Registration No. 0242735 (the "Plan"), to Dyment Limited in the amount of 50% of the partial wind up surplus of $636,915 as at August 23, 1996, plus 50% of investment earnings thereon to the date of payment, less 50% of expenses relating to the partial wind up of the Plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements pursuant to the Surplus Distribution Agreement set out in paragraph 5 below and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **Dyment Limited is the employer as defined in the Plan (the "Employer").**
2. **The Plan was partially wound up, effective August 23, 1996.**
3. **As at August 23, 1996 the surplus in the Plan related to the partial wind up was estimated at $636,915.**
4. **The Plan provides for payment of surplus to the Employer on the wind up of the Plan.**
5. **The application discloses that by written agreement made by the Employer and 67.9% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of partial wind up expenses is to be distributed:**
   a) **50% to the Employer; and**
   b) **50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.**
6. **The Employer has applied, pursuant to section 78 of the Act and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings and deducting 50% of the expenses related to the partial wind up of the Plan).**
7. **The application appears to comply with section 78 and subsections79(3)(a) and (b) of the Act and with clause 8(1)(b)**

and subsections 28(5) and 28(6) of the Regulation.

8. **Such further and other reasons as come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

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DATED at Toronto, Ontario, this 4th day of June, 2004

K. David Gordon
Deputy Superintendent, Pensions

c.c. Kerry Worgan,
Mercer Human Resource Consulting

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration Number 687608 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Appointed Administrator

AND TO: **Philip Services Inc.**
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122
Attention: Ms. Linda Bogdanovic, Director, Human Resources
Employer

AND TO: **Ernst & Young Inc.**
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Ms. Leslea Gordon
Trustee in Bankruptcy

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:

That the Plan be wound up in whole effective December 30, 2003.

REASONS:

1. **The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.**
2. **A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer, pursuant to clause 69(1)(d) of the Act.**
3. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan of Cumba, Registration No. 0558379;**

TO: **CUMBA**
562 Eglington Avenue East
Toronto ON M4P 1B9
Attention: Patricia Cormier
Chief Administrator
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Pension Plan of Cumba, Registration No. 0558379 (the "Plan") to CUMBA in the amount of $32,898.50, plus investment earnings thereon to the date of payment less 50% of the expenses relating to the wind up of the Plan.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me in writing that the member's portion of the surplus assets, as set out in the Surplus Sharing Agreement have been paid or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **CUMBA is the employer as defined in the Plan (the "Employer").**
2. **The Plan was wound up, effective February 28, 2001.**
3. **As at February 28, 2001, the surplus in the Plan was estimated at $65,797.**
4. **The Plan provides for payment of surplus to the Employer on the wind up of the Plan.**
5. **The application discloses that by written agreement made by the Employer and 82% of the active members and 75% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:**
   a) **50% to the Employer; and**
   b) **50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.**
6. **The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding investment earnings and deducting the expenses related to the wind up of the Plan).**
7. **The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.**
8. **Such further and other reasons as come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of June, 2004

K. David Gordon
Deputy Superintendent, Pensions

c.c. Annie Doucet,
The Standard Life Assurance Company

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for the Employees of Elias Markets Ltd., Registration Number 1063486 (the "Pension Plan");**

TO:	**Standard Life Assurance Company** 1245 Sherbrooke Street West Montreal PQ H3G 1G3
Attention:	Dominic Muro Compliance Support Specialist Group Savings and Retirement **Administrator of the Pension Plan**
AND TO:	**Elias Markets Ltd.** 250 Tecumseh Road East Windsor ON N8X 2R3
Attention:	Joe Elias President **Employer**
AND TO:	**Richter & Partners Inc.** 200 King Street West Suite 1900, P.O. Box 1900 Toronto ON M5H 3T4
Attention:	Jackie Glazer **Interim Receiver of Elias Markets Ltd.**

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for the Employees of Elias Markets Ltd., Registration Number 1063486, be wound up in full effective August 23, 2002.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**
5. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, Toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Guelph Dolime Limited Pension Plan for Salaried and Hourly-Rated Employees, Registration No. 0591909;**

TO: **Carmeuse Lime (Canada) Limited**
c/o Blake, Cassels & Graydon LLP
Box 25, Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1A9

Attention: Jeffrey P. Sommers
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Guelph Dolime Limited Pension Plan for Salaried and Hourly-Rated Employees, Registration No. 0591909 (the "Plan"), to Carmeuse Lime (Canada) Limited in the amount of $570,000 as at March 31, 2004, less legal fees incurred by the Company relating to the implementation and distribution of the Surplus and adjusted for investment gains and losses to the date of distribution.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all payments to which the members, former members, and any other persons entitled to such payments have been paid or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **The Employer is defined in the Plan as Guelph Dolime Limited. However, the Applicant has submitted sufficient evidence that the applicant is one and the same as the Employer named in the Plan.**
2. **The Plan was wound up, effective September 30, 2001.**
3. **As at March 31, 2004, the surplus in the Plan was estimated at $950,000.**
4. **The Plan provides for payment of surplus to the Employer on the wind up of the Plan.**
5. **The application discloses that by written agreement made by the Employer and 100% of the active members and 87.5% of the former members that the surplus in the Plan as at March 31, 2004 will be distributed as follows:**
   a) **60% to the Employer; and**
   b) **40% to the Surplus Sharing Group.**
6. **The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 60% of the surplus in the Plan.**
7. **The application appears to comply with section 78 and subsection 79(3)(a) and 79(3)(b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.**

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 29th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

c.c. Hugh O'Reilly,
Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Retirement Income Plan for Salaried Employees of BPB Canada Inc. and Subsidiary and Associated Companies, Registration Number 210039;**

TO: **BPB Canada Inc.**
2424 Lakeshore Road West
Mississauga ON L5J 1K4
Attention: Mr. Keith Campbell
Vice-President Finance and
C.F.O.
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Retirement Income Plan for Salaried Employees of BPB Canada Inc. and Subsidiary and Associated Companies, Registration No. 210039 (the "Plan"), to BPB Canada Inc. in the amount of $28,129,000 as at January 1, 2002, and adjusted for expenses and investment earnings in accordance with the surplus sharing agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. **BPB Canada Inc. is the employer as defined in the Plan (the "Employer").**
2. **As at January 1, 2002, the surplus in the Plan on an ongoing basis was estimated at $73,858,000. After adjustment for holdbacks the surplus available for distribution is $56,258,000.**
3. **The Plan provides for payment of surplus to the Employer while the Plan continues.**
4. **The application discloses that by written agreement made by the Employer, and all of the active members, all of the former members and other persons entitled to payments from the fund, and all persons in respect of whom the administrator has purchased an annuity or ancillary benefit- other than those persons who requested the administrator to do so, the surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:**
   a) **50% to the Employer; and**
   b) **50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.**
5. **The Employer has applied, pursuant to section 78 of the Act, and section 10 of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus to be distributed from the Plan (after adding 50% of investment earnings and deducting 50% of the expenses related thereto).**
6. **The application appears to comply with section 78 and subsection 79(1) of the Act and with section 10 and subsections 25(1), 25(2) and 25(4) of the Regulation.**
7. **Such further and other reasons as come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is

served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE REQUIRING A HEARING must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 7th day of July, 2004.

K. David Gordon
Deputy Superintendent, Pensions

Copy: Ms. Sonia Mak,
Borden Ladner Gervais LLP
Mr. Mark Zigler, Koskie Minsky
Mr. Brent Thomson
Mr. Keith Campbell
Ms. Alice Carr

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Notices of Proposal to Refuse to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the Act Respecting the **Portship Employees Negotiated Pension Plan, Registration Number 0393199 (the "Plan");**

TO: **Mr. Constantin Munteanu**
213 Maplegrove Avenue
Bradford ON L3Z 1V3
Applicant

AND TO: **Pascol Engineering**
P.O. Box 10634
Thunder Bay ON P7B 6V1
Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the Act directing Pascol Engineering, formerly Port Arthur Shipbuilding Company (the "Company"), to make an additional payment from the fund for the Plan in respect of the Applicant's pension benefits or the commuted value of his pension benefits.

REASONS FOR THE REFUSAL:

1. **The Applicant was employed by the Company from June 15, 1984 to October 28, 1988. The Plan is administered by the Company. The Applicant was a member of the Plan during his employment with the Company. Eckler Partners Ltd. (the "Actuaries") were the consulting actuaries to the Plan and the pension fund was managed by GWL Investment Management Ltd. ("Great West Life"). Upon the termination of the Applicant's employment, he became entitled to a deferred pension under section 6.01 of the Plan.**
2. **The Trustee of the Plan had the discretion under section 9.06 of the Plan to pay the commuted value of the deferred pension owing to the Applicant in a lump sum.**
3. **The Applicant claims that his deferred pension or a lump sum payment in respect of his deferred pension was never paid to him. The Applicant has requested an order requiring the Company to pay the commuted value of his deferred pension from the fund for the Plan.**
4. **The membership data supplied by the Actuaries, shows the Applicant's status as of December 31, 1988 as "Terminated with Vesting Benefits." The membership data as of December 31, 1989, one year later, shows the Applicant's status as "Commuted Value Paid."**
5. **In addition, a statement supplied by Great West Life with the heading "Detail of Benefit Payments" for the Plan for the period January 1, 1989 to December 31, 1989, shows the amount of $805.83 as having been paid to the Applicant as a withdrawal benefit.**
6. **Although the Administrator did not produce a copy of the cheque paid to the Applicant or the cheque number, the statement supplied by Great West Life**

demonstrates that the Applicant was paid the commuted value of his pension benefit from the Plan.

7. **The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) if he is of the opinion, on reasonable and probable grounds, that the Pension Plan or pension fund is not being administered in accordance with the Pension Plan.**
8. **For the reasons set out above, the Superintendent is not of the opinion that the Plan is not being administered in accordance with its terms.**
9. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the registrar of the Tribunal by phone at: 416- 226-7752, Toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 8th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pension Division

c.c. Mr. Charles Wrock, Wrock & Associates

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the Act respecting a request by Peter Stopyn and Douglas Llewellyn relating to the **Pension Plan for Members of United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada, Local 67, Registration No. 381525 (the "Plan");**

TO: **Peter Stopyn**
P.O. Box 71-LCD-1
Hamilton ON L8N 3A2
Applicant

AND TO: **Douglas Llewellyn**
203 East 43rd Street
Hamilton ON L8T 3C3
Applicant

AND TO: **Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67**
C/O Reliable Administrative Services Inc.
195 Dartnall Road,
Suite 102
Hamilton ON L8W 3V9

Attention: Mr. Leslie Ellerker
Chairman, Board of Trustees
Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER:

(a) Requiring the Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67 (the "Board"), the Administrator of the Plan, to not suspend the retirement benefits of former members of the Plan who return to work with an employer that participates in the Plan after the commencement of their retirement benefits;

(b) requiring the Board to limit the suspension of the retirement benefits of former members of the Plan who return to work with an employer who participates in the Plan after the commencement of retirement benefits to situations where the returning former member works more than 200 hours in any calendar year and not where the returning former member is paid for more than 200 hours where they do not work more than 200 hours; or

(c) requiring the Trustees to amend the Plan so that the Plan text reflects the requirements listed in paragraphs (a) or (b) above as the case may be.

REASONS:

1. **The Plan is a multi-employer pension plan ("MEPP") established pursuant to collective agreements and a trust agreement. The Plan covers employees represented by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the**

United States & Canada, Local Union 67. The Plan is administered by the Board.

2. The Applicants are former members of the Plan and are in receipt of retirement benefits. The Applicants are also members of the Board.
3. Prior to January 1, 1992, former members of the Plan who were in receipt of retirement benefits were permitted by the Board to return to work with a participating employer without any suspension or decrease in the amount of their retirement benefits.
4. The restated Plan text as amended to January 1, 1992 (the "1992 Restatement"), contained section 4.8 that required that if the former member is re-hired by a participating employer, the payment of the former member's retirement benefits be suspended. In such circumstances, the 1992 Restatement required that the former member become an active member of the Plan and accrue service credits in respect of the further period of employment. Upon subsequent retirement, the member's retirement benefits were to be recalculated in accordance with applicable statutory requirements, taking into account the retirement benefits that accrued during the period of re-employment.
5. Notice of the change to the re-employment provisions of the Plan was provided to members in a letter dated January 16, 1992. The Superintendent of Pensions (the predecessor to the Superintendent of Financial Services [the "Superintendent"]) registered the 1992 Restatement, including Article 4.8, on May 2, 1994.
6. The Plan provisions relating to re-employment were again amended at a Board meeting on October 13, 1999. The amendment was effective July 1, 1997 and is dated December 8, 1999 (the "1999 Amendment"). The 1999 Amendment permitted a former member to work up to 200 hours in a calendar year with a participating employer without suspension of their retirement benefits. Thereafter, the former member's retirement benefits would be suspended. Section 4.8 (as amended by the 1999 Amendment) reads as follows:

   > If a Pensioner is re-hired by an Employer and works in excess of 200 hours in any calender year, payment of the Pensioner's Retirement Benefits shall thereafter be suspended, the Pensioner shall become a Member of the Plan once again and shall recommence to accrue Plan hours pursuant to the terms of the Plan. Upon subsequent retirement after such a period of re-employment under this section, the Member's Retirement Benefits shall be redetermined in accordance with the Applicable Statutory Requirements, taking into account Retirement Benefits accrued during the period of re-employment.

7. The Superintendent registered the 1997 Amendment on February 4, 2000.
8. The Board again amended section 4.8 of the Plan at a Board meeting on September 11, 2002. At that time, the Board adopted Amendment 2002-2 which amended

section 4.8 again effective July 1, 1997. The Amendment 2002-2 replaced the words "works in excess of" in the first sentence of section 4.8 with the words "is paid for more than". Amendment 2002-2 reflects the fact that a re-employed former member may work overtime hours at premium rates that increase the hours paid. Thus, a former member may reach the 200 hours paid threshold before he or she reaches the 200 hours worked threshold.

9. The Applicants have objected to the re-employment provisions of the Plan. They have objected to the suspension of retirement benefits generally. The Applicants also have objected to Amendment 2002-2 which replaces the 200 hours worked threshold with the 200 hours paid threshold.
10. The Applicants allege that the re-employment provisions of the Plan, generally, and the 200 hours paid threshold, specifically, violate the Canadian Bill of Rights, Canadian Charter of Rights and Freedoms, constitute a breach of the Board's fiduciary duties and the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "Act").
11. The Plan documents grant to the Board a wide power to amend the terms of the Plan. The Plan, starting with the 1992 Restatement, provides that the Plan may be amended by the Board subject to the provisions of any applicable collective agreement and the fact that no amendment should have the effect of re-vesting any portion of the pension fund in the employer. Section 10.1 of the Plan reads as follows:

> This Plan may be amended or discontinued by the action of the Trustees, in accordance with any applicable provisions of the Collective Agreement, provided, however, that no such amendment shall have the effect of revesting in any Employer any part of the principal or income for purposes other than the exclusive benefit of the Members, Spouses, Beneficiaries, Dependent Children and Pensioners.

12. As such, it is within the discretion granted to the Board to amend the Plan to introduce a suspension of retirement benefits upon re-employment of a former member with or without a 200 hours worked or paid threshold. There is no basis to conclude that the adoption of the re-employment provisions constitutes an unreasonable exercise of the Board's discretion or a breach of the Board's fiduciary duties.
13. In addition, the re-employment provisions of the Plan do not violate the Act. The Board is free to amend the Plan provided that such amendments do not violate the Act and the terms of the Plan permit such amendments (as they do in this case).
14. Moreover, sections 35(3) and (4) of the Act contemplate that a pension plan member who continues employment after the normal retirement date will not be in receipt of their pension benefit payments while they continue to be employed but will continue to accrue service in the pension plan. The re-employment provisions of the Plan similarly provide for a cessation

of pension benefits upon re-employment with a participating employer and further accrual of benefits for the period of re-employment.

15. **The Applicants claim that Amendment 2002-2 violates the Act because it takes away accrued benefits from re-employed former members as the threshold has been lowered from 200 hours worked to 200 hours paid retroactively to July 1, 1997.**
16. **However, section 14(2) of the Act states that the prohibition against amendments that reduce accrued benefits in section 14(1) of the Act does not apply to MEPPs established pursuant to a collective agreement or a trust agreement such as the Plan. Therefore, the re-employment provisions of the Plan do not contravene the prohibition against amendments that reduce accrued benefits contained in the Act.**
17. **The Board's actions in adopting and amending the various re-employment provisions of the Plan do not constitute a violation of the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms. The Canadian Bill of Rights is only applicable to federal laws and the Canadian Charter of Rights and Freedoms is only applicable to governmental action. In either case, neither law has any application to the decision of the Board in adopting and amending the re-employment provisions.**
18. **Such further reasons as may come to my attention.**

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal, a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at: 416- 226-7752, Toll-free at: 1-800-668-0128, ext. 7752, or by fax at: 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER REQUESTED, AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, April 23rd, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

Notices of Proposal to Make a Declaration That the Pension Benefits Guarantee Fund Applies to Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Employees Retirement System of ABC Rail Limited (the "Pension Plan") Registration Number 0104197;**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

AND TO: **ABC Rail Limited**
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515
Attention: June Tushar
Manager, Employee Benefits
Employer

AND TO: **Teamsters Joint Council 79**
255 Morningside Avenue
Scarborough ON
Attention: Peter Mills
President
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, the "Act") c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions has issued a Notice of Proposal to order the wind up of the Pension Plan effective November 6, 1991 pursuant to section 69 of the Act; and
4. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on February 7, 2003.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Pension Plan was established effective July 9, 1987, pursuant to a collective agreement between the Employer and Teamsters Joint Council No. 9 (formerly the "Canadian Conference of Teamsters, Chemical, Energy and Allied Workers,

Local 2175) and was registered by the Financial Services Commission (formerly the "Pension Commission of Ontario") in July 1996.

2. The Deputy Superintendent, Pensions, has issued a Notice of Proposal to order the wind up of the Pension Plan effective November 6, 1991.
3. At the date of the Administrator's appointment by the Superintendent, the Pension Plan held no assets as the Employer never made any contributions to the Pension Plan. The Pension Plan is non-contributory for Plan members.
4. The Administrator has advised that it conducted an investigation and found no evidence that the Employer has any assets in Canada that might be pursued to help fund the deficit. The Administrator further advises that the Employer's parent company, ABC Rail Products Corporation commenced Chapter 11 proceedings under the United States Bankruptcy Code in October, 2001. The Administrator said it also investigated the possibility of pursuing recovery of the Pension Plan's shortfall against the parent company in the Chapter 11 proceedings but concluded that the likelihood of recovery from this source is remote and that it is not cost effective to pursue this avenue of recovery further.

   The Administrator also found no evidence of any agreement between the Employer and its parent company providing that the parent company would fund the shortfall in the Pension Plan and has concluded that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario this 11th day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by The United Steel Workers of America, Registration Number 289439 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Human Resource Services
Appointed Administrator

AND TO: **Port Colborne Iron Works Limited**
PO Box 66
Port Colborne ON L3K 5V7
Attention: Edward B. Magee Jr.
President
Employer

AND TO: **BDO Dunwoody Limited**
37 Dorothy Street
Welland ON L3B 3V6
Attention: Mr. David Ponting, Partner
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 4763**
2601 Highway 20 East
Unit 7
Fonthill ON L0S 1E6
Attention: Union Representative for the members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by The United Steel Workers of America, is registered under the Act as Registration Number 289439 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on October 8, 2003; and
4. The Deputy Superintendent, Pensions, issued a Notice of Proposal on March 8, 2004 to make an order that the Plan be wound up effective October 25, 2002 through November 12, 2002; and
5. On March 8, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
6. The Administrator's preliminary actuarial estimate of the deficit in the Plan as at November 12, 2002 is $378,900 with a wind up funded ratio of 59.9% for the Plan; and
7. The Administrator has requested the Superintendent's approval to commence

pensions to new retirees at the reduced level of 59.9% until further notice.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Port Colborne Iron Works, Limited, was adjudged bankrupt on February 11, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 59.9%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be of the order of $378,900.00.
4. The trustee in bankruptcy has advised the Administrator that unsecured creditors such as the Plan cannot expect more than 25% of their claim to be settled from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 22nd day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for the Employees of United Tire & Rubber Co. Limited Represented by United Steel Workers of America, Local 3950 (the "Pension Plan"), Registration Number 0424671;**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5G 1G8
Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

AND TO: **United Tire & Rubber Co. Limited**
275 Belfield Road
Rexdale ON M9W 5C6
Attention: Raymond J. Fernandes
Chief Financial Officer
Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Rick Kanabar
Manager
Receiver and Manager for United Tire & Rubber Co. Limited

AND TO: **Schonfeld Inc.**
Suite 2400, 390 Bay Street
Toronto ON M5T 1N1
Attention: Harlan Schonfeld
Trustee in Bankruptcy for United Tire & Rubber Co. Limited

AND TO: **United Steel Workers of America, Local 3950**
234 Eglinton Avenue East
Suite 800
Toronto ON M4P 1K7
Attention: Jeff Richardson
National Representative
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for the Employees of United Tire & Rubber Co. Limited Represented by United Steel Workers of America, Local 3950, Registration No. 0424671 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and

3. The Pension Plan was wound up effective March 14, 2000; and
4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on May 18, 2000.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of $315,302 as at March 14, 2000 and an estimated claim against the Guarantee Fund as at March 14, 2000 of $288,744. Furthermore, the Actuarial Certification filed by the Administrator and dated March 16, 2004, stipulates that there will be a claim against the Guarantee Fund as at July 1, 2004.
2. Ernst & Young was appointed Receiver and Manager of United Tire & Rubber Co. Limited on February 15, 2000 and Schonfeld Inc. was appointed Trustee in Bankruptcy on March 14, 2000.
3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of United Tire & Rubber Co. Limited to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 31st day of March, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the "Pension Plan");**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5G 1G8
Attention: Tony Karkheck
Senior Vice President
Administrator of the Pension Plan

AND TO: **Cold Metal Products Limited**
65 Imperial Street
P.O. Box 66, LCD1
Hamilton ON L8L 7V2
Attention: Soheil Monzavi
General Manager
Employer

AND TO: **Richter & Partners**
200 King Street West
Suite 1900
Toronto ON M5H 3T4
Attention: Javed Rasool
Trustee in Bankruptcy for Cold Metal Products Limited

AND TO: **The United Steelworkers of America Local, 4444**
1031 Barton Street East,
Room 113
Hamilton ON L8L 3E3
Attention: Roy Leslie
Staff Representative
Union

AND TO: **The United Steelworkers of America Local, 7625**
4115 Ontario East
Montreal PQ H1V 1J7
Attention: Gaetan Pare
Local President
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for the Employees of Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and

3. The Deputy Superintendent, Pensions, has issued a Notice of Proposal to order the wind up of the Pension Plan effective March 17, 2003, pursuant to section 69 of the Act; and
4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on June 16, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The last full Actuarial Valuation Report for this Pension Plan was produced by the Plan actuary as of December 31, 1999. The Pension Plan was reported to have a 98% transfer ratio at that date. Subsequent to December 31, 1999, the actuary prepared Interim Actuarial Opinions on the Pension Plan on several occasions, most recent being as of December 31, 2002. As of December 31, 2002, the funded ratio of the Pension Plan was reported to be 66%.

   Following its appointment, the Administrator requested the actuary prepare a preliminary estimate of the wind up liabilities of the Pension Plan as of March 31, 2003. The actuary estimated the wind up funded ratio as 55% on assets and liabilities of $7,622,644, and $12,154,000, respectively.

2. Richter and Partners Inc. was appointed Interim Receiver of Cold Metal Products Limited on March 17, 2003 and Trustee in Bankruptcy on March 24, 2003.
3. The Trustee in Bankruptcy has advised the Administrator that no assets are expected to become available for distribution to ordinary creditors of the bankrupt estate.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario this 8th day of April, 2003.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Moyer Vico Corp., Registration Number 465070;**

TO:	**Morneau Sobeco** 895 Don Mills Road, Suite 700 One Morneau Sobeco Centre Toronto ON M3C 1W3
Attention:	Ms. Pauline Frenette Associate Consultant **Administrator**
AND TO:	**Moyer Vico Corp.** 25 Milvan Drive Weston ON M9L 1Z1
Attention:	Adam Okhai President & CEO. **Employer**
AND TO:	**Mintz and Partners Limited** 1446 Don Mills Road, Suite 100 Don Mills ON M3B 3N6
Attention:	Daniel R. Weisz Senior Vice-President **Trustee in Bankruptcy**
AND TO:	**Industrial Wood & Allied Workers of Canada, Local 1-700** 2088 Weston Road Toronto ON M9N 1X4
Attention:	Ron Diotte President, Local 1-700 **Union representative for the members of the Plan**

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Moyer Vico Corp. (the "Plan"), is registered under the Act as Registration Number 465070; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On October 26, 2000, the Superintendent of Financial Services (the "Superintendent") issued an Order that the Plan was to be wound up effective October 16, 2002; and
4. On July 10, 2002, the Superintendent appointed Morneau Sobeco as administrator of the Plan to replace the prior appointed Administrator, Arthur Andersen Inc.; and
5. On February 11, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002; and
6. On March 18, 2004, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan, based upon the said wind up report; and
7. On March 31, 2004, the Superintendent approved distribution of the Plan's assets in accordance with the wind up report, conditional upon any additional funding that may be required from the Guarantee Fund with respect to the defined benefits under the Plan.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has determined the wind up funded ratio of the defined benefit portion of the Plan to which the Guarantee Fund would apply, to be 5.91%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the Administrator to be $107,739.00.
3. The Employer was assigned into bankruptcy on November 13, 1997.
4. The trustee in bankruptcy for Moyer Vico Corp. has advised the Administrator that there are no funds available from the bankrupt Employer's estate for distribution to the Plan.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. If funds become available for the Plan from the estate of the Employer, the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
7. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 27th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Ryancon, Registration Number 298430 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Appointed Administrator

AND TO: **Ryancon**
144 Sharer Road
Vaughan ON L4L 8P4
Attention: John D. Hains,
Chief Financial Officer
Employer

AND TO: **BDO Dunwoody Limited**
33 City Centre Drive, Suite 680
Mississauga ON L5B 2N5
Attention: Mr. Darryl McConnell,
Senior Manager
Trustee in Bankruptcy/ Receiver and Manager

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Ryancon is registered under the Act as Registration Number 298430 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on December 17, 2003; and
4. On March 15, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
5. The Administrator's preliminary actuarial estimate of the deficit in the Plan as at August 31, 2003 is $1,421,000, with a wind up funded ratio of 75.78% for the Plan; and
6. The Administrator has cutback all pensioners to the estimated funded ratio effective March 1, 2004 until further notice; and
7. On May 13, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to wind up the Plan effective March 31, 2003 through June 30, 2003.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Ryancon, was adjudged bankrupt on November 7, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 75.78%.
3. The Administrator has estimated the deficit in the plan as of as at August 31, 2003 to be $1,421,000.
4. The trustee in bankruptcy has advised the Administrator that there are not enough

funds available for full distribution to the ordinary unsecured creditors.

5. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 4th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division), Registration Number 680405 (formerly C-104311) (the "Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
1 Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: Ms. Pauline Frenette
Associate Consultant
Administrator

AND TO: **Striker Paper Canada, Inc.**
100 Ormond Street South
P.O. Box 10,
Thorold ON L2V 3Y7
Attention: Ms. Patricia Gough
Manager
Employer

AND TO: **BDO Dunwoody Limited**
Royal Bank Plaza
P.O. Box 33
Toronto ON M5J 2J9
Attention: Mr. Mark Chow
Trustee in Bankruptcy

AND TO: **Communications, Energy and Paper Workers Union of Canada**
5890 Aspen Court
Niagara Falls ON L2G 7V3
Attention: Michael Lambert
National Representative
Union Representative for the members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Unionized Employees of Northern Globe Building Materials (Thorold Division) is registered under the Act as Registration Number 680405 (formerly C-104311) (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco Administrator of the Plan on July 10, 2002; and
4. The Superintendent of Financial Services issued an Order that the Plan be wound up effective February 22, 1999; and
5. The distribution of assets of the Plan proposed by the wind up report was approved by the Superintendent of Financial Services on April 19, 2005, subject to any additional funding that may be required from the Guarantee Fund; and
6. On March 5, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
7. The wind up report identified a deficit in the Plan as at February 22, 1999 of $349,343 and a wind up funded ratio of 0.0%, with

an estimated claim against the Guarantee Fund of $331,601.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Striker Paper Canada Inc. was adjudged bankrupt on March 22, 2000.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 0.0%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be $331,601.00.
4. The trustee in bankruptcy has advised the Administrator that there are no funds available for the Plan from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 29th day of June, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6098, Registration Number 347047 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Administrator

AND TO: **Philip Services Inc.**
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122
Attention: Ms. Linda Bogdanovic
Director, Human Resources
Employer

AND TO: **Ernst & Young Inc.**
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Ms. Leslea Gordon
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 6098**
1031 Barton Street East,
Room 113
Hamilton ON L8L 3E3
Attention: Mr. Charlie Scibetta
Union Representative for the Members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6098 is registered under the Act as Registration Number 347047 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On December 19, 2003, the Employer submitted to FSCO an amendment to wind up the plan effective July 31, 2003; and
4. The Employer made a voluntary assignment into bankruptcy on December 30, 2003 and Ernst & Young were appointed trustee in bankruptcy on December 30, 2003; and
5. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on March 19, 2004; and
6. On April 2, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
7. The Administrator's preliminary estimate of the deficit in the Plan as at July 31, 2003, before provision for wind up expenses and a contingency reserve, is $1,373,000; and
8. The Administrator filed a proof of claim on March 31, 2004 with the trustee in

bankruptcy for an amount of $1,800,000 in respect of the estimated deficiency in the Plan after provision for wind up expenses and a general contingency reserve; and

9. The trustee in bankruptcy has advised the Administrator that the expected return to ordinary creditors of the bankrupt estate, of which the Plan is one, is 1 to 3 cents on the dollar.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Philip Services Inc., voluntarily assigned itself into bankruptcy on December 30, 2003.
2. The Administrator has estimated the deficiency in the plan as of July 31, 2003, the date of wind up of the Plan, to be $1,373,000 before any provision for wind up expenses and a contingency reserve.
3. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 7th day of July, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6920, Registration Number 474932 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Administrator

AND TO: **Philip Services Inc.**
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122
Attention: Ms. Linda Bogdanovic
Director, Human Resources
Employer

AND TO: **Ernst & Young Inc.**
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Ms. Leslea Gordon
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 6920**
1031 Barton Street East,
Room 113
Hamilton ON L8L 3E3
Attention: Mr. Charlie Scibetta
Union Representative for the Members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6920 is registered under the Act as Registration Number 474932 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On December 19, 2003, the Employer submitted to FSCO an amendment to wind up the plan effective July 31, 2003; and
4. The Employer made a voluntary assignment into bankruptcy on December 30, 2003 and Ernst & Young were appointed trustee in bankruptcy on December 30, 2003; and
5. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. Administrator of the Plan on March 19, 2004; and
6. On April 2, 2004, the Administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
7. The Administrator's preliminary estimate of the deficit in the Plan as at July 31, 2003, before provision for wind up expenses and a contingency reserve, is $1,777,000; and
8. The Administrator filed a proof of claim on March 31, 2004 with the trustee in

bankruptcy for an amount of $2,181,000 in respect of the estimated deficiency in the Plan after provision for wind up expenses and a general contingency reserve; and

9. The trustee in bankruptcy has advised the Administrator that the expected return to ordinary creditors of the bankrupt estate, of which the Plan is one, is 1 to 3 cents on the dollar.

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The employer, Philip Services Inc., voluntarily assigned itself into bankruptcy on December 30, 2003.
2. The Administrator has estimated the deficiency in the plan as of July 31, 2003, the date of wind up of the Plan, to be $1,777,000 before any provision for wind up expenses and a contingency reserve.
3. The Administrator is of the view that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be met.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE REQUIRING A HEARING shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 7th day of July, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 - PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan");**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Tony Karkheck
Senior Vice President
Administrator of the Pension Plan

AND TO: **ABC Rail Limited**
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515
Attention: June Tushar
Manager, Employee Benefits
Employer

ORDER

ON the 5th day of February 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 5th day of February, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Employees Retirement System of ABC Rail Limited, Registration Number 0104197.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Employees Retirement System of ABC Rail Limited, Registration Number 0104197, be wound up in whole effective November 6, 1991, for the following reasons:

1. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
2. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Teamsters Joint Council 79
255 Morningside Avenue
Scarborough ON
Attention: Peter Mills
President
Union

DATED at Toronto, Ontario, this 1st day of April, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act relating to the **Mosler Canada Inc. Pension Plan for Salaried Employees, Registration Number 941732 (the "Plan");**

TO:	**Canada Life Assurance Company** 330 University Avenue Toronto ON M5G 1R8
Attention:	Ms. Milica Stojsin Plan Wind-up Consultant, Investments & Pensions **Appointed Administrator**
AND TO:	**Mosler Canada Inc.** 150 Britannia Road East, Unit12 Mississauga ON L4Z 2A4
Attention:	Ms. Janet Leigh **Employer**

ORDER

ON or about October 20, 2003, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 20, 2003 to make an Order that the Plan be wound up in whole effective September 23, 2001 pursuant to section 69(1) of the Act.

NO request for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective September 23, 2001.

REASONS:

1. **Cessation or suspension of Employer contributions to the pension fund pursuant to clause 69(1)(a) of the Act.**
2. **All or a significant part of the business has been discontinued at a specific location pursuant to clause 69(1)(e) of the Act.**

DATED at North York, Ontario, this 8th day of April, 2004.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for Salaried Employees of Finlayson Enterprises Ltd., Registration Number 247593 (the "Plan");**

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6
Attention: Ms. Darlene Stegner
Plan Design Specialist
Administrator

AND TO: **Finlayson Enterprises Ltd.**
1510B Caterpillar Road
Mississauga ON L4X 2W9
Attention: Ms. Victoria Mayers,
Vice-President and Controller.
Employer

AND TO: **Deloitte & Touche Inc.**
Suite 1900
79 Wellington Street West
PO Box 29, TD Centre
Toronto ON M5K 1B9
Attention: Mr. Wes Treleaven
Senior Vice-President
Trustee in Bankruptcy

AND TO: **Shiner Zweig Inc.**
10 West Pierce Street, Suite 4
Richmond Hill ON L4B 1B6
Attention: Mr. Wes Treleaven
Senior Vice-President
Receiver & Manager

ORDER

ON or about February 24, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated February 24, 2004 to make an Order that the Plan be wound up in whole effective January 6, 2003, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective January 6, 2003.

REASONS:

1. **Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.**
3. **The Employer's business has been sold and the successor employer does not provide a pension plan the employees acquired, pursuant to clause 69(1)(f) of the Act.**

DATED at North York, Ontario, this 22nd day of April, 2004.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for the Employees of Greenspoon Bros. Limited, Registration Number 258889 (the "Plan");**

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, PO Box 1602
Waterloo ON N2J 4C6
Attention: Ms. Darlene Stegner
Plan Design Specialist
Administrator

AND TO: **Greenspoon Bros. Limited**
16 Melanie Drive
Brampton ON L6T 4K9
Attention: Mr. Ira Greenspoon
Vice-President, Finance
Employer

AND TO: **Mandelbaum Spergel Inc.**
505 Consumers Road, Suite 200
Toronto ON M2J 4V8
Attention: Mr. Bryan Gelman
Trustee in Bankruptcy

ORDER

ON or about February 20, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated February 20, 2004 to make an Order that the Plan be wound up in whole effective April 30, 2003, pursuant to section 69(1) of the Act.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective April 30, 2003.

REASONS:

1. **The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.**

DATED at North York, Ontario, this 22nd day of April, 2004.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by The United Steel Workers of America, Registration Number 289439 (the "Plan");**

TO:	**PricewaterhouseCoopers Inc.**
	Royal Trust Tower, Suite 3000
	PO Box 82,
	Toronto Dominion Centre
	Toronto ON M5K 1G8
Attention:	Mr. Tony Karkheck
	Human Resource Services
	Appointed Administrator
AND TO:	**Port Colborne Iron Works Limited**
	PO Box 66
	Port Colborne ON L3K 5V7
Attention:	Edward B. Magee Jr.
	President
	Employer
AND TO:	**BDO Dunwoody Limited**
	37 Dorothy Street
	Welland ON L3B 3V6
Attention:	Mr. David Ponting
	Partner
	Trustee in Bankruptcy

ORDER

ON or about March 8, 2004 the Deputy Superintendent, Pensions, issued a Notice of Proposal dated March 8, 2004 to make an Order that the Plan be wound up in whole effective October 25, 2002 through November 12, 2002, pursuant to section 69(1) of the Act.

NO request for a hearing has been received by the Financial Services Tribunal in connection with this matter.

I THEREFORE ORDER that the Plan be wound up in whole effective October 25, 2002 through November 12, 2002.

REASONS:

1. **Failure of the Employer to make contributions to the pension fund of the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the Act.**
2. **The Employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the Act.**
3. **A significant number of members have ceased to be employed by the Employer as the result of the discontinuance or reorganization of all of part of business of the Employer pursuant to clause 69(1)(d) of the Act.**

DATED at North York, Ontario, this 3rd day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the "Pension Plan");**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto-Dominion Centre
Toronto ON M5G 1G8
Attention: Tony Karkheck
Senior Vice President
Administrator

AND TO: **Cold Metal Products** Limited
65 Imperial Street
P.O. Box 66, LCD1
Hamilton ON L8L 7V2
Attention: Soheil Monzavi
General Manager
Employer

AND TO: **Richter & Partners**
200 King Street West
Suite 1900
Toronto ON M5H 3T4
Attention: Javed Rasool
Trustee in Bankruptcy for Cold Metal Products Limited

ORDER

ON the 20th day of February, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 20th day of February, 2004, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act"), to the Administrator and to the Employer to wind up in whole the Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal (the "Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE HEREBY ORDERED that the Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045, be wound up in whole, effective March 17, 2003, for the following reasons:

1. The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
2. A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganisation of the business of the Employer.
3. All or a significant portion of the business carried on by the Employer at a specific location is discontinued.
4. All or part of the Employer's business or all or part of the assets of the Employer's business are sold, assigned or otherwise disposed of

and the person who acquires the business or assets does not provide a pension plan for the members of the Employer's Pension Plan who become employees of the person.

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

TO:	**The United Steelworkers of America Local, 4444** 1031 Barton Street East, Room 113 Hamilton ON L8L 3E3
Attention:	Roy Leslie Staff Representative **Union**
AND TO:	**The United Steelworkers of America Local, 7625** 4115 Ontario East Montreal PQ H1V 1J7
Attention:	Gaetan Pare Local President **Union**

DATED at Toronto, Ontario this 13th day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting the **Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995 (the "Pension Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: David R. Kearney
Administrator of the Pension Plan

AND TO: **Fantom Technologies Inc.**
PO Box 1004
Welland ON L3B 5S1
Attention: Norm Wotherspoon
Treasurer
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 20th day of March, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole the Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995, be wound up in full for those members who ceased to be employed effective between November 20, 2000 and October 5, 2001, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Catherine Hristow
Vice President
Interim Receiver and
Trustee in Bankruptcy for
Fantom Technologies Inc
The United Steelworkers of
America Local 6444,
District 6
234 Eglinton Avenue East
Toronto ON M4P 1K5

Attention: Robert Heally and Brian
Greenaway
Union

DATED at Toronto, Ontario, this 13th day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810 (the "Pension Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: David R. Kearney
Administrator of the Pension Plan

AND TO: **Fantom Technologies Inc.**
PO Box 1004
Welland ON L3B 5S1
Attention: Norm Wotherspoon
Treasurer
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 20th day of March, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810, be wound up in full for those members who ceased to be employed effective between October 12, 2001 and March 22, 2002, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

PricewaterhouseCoopers Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Catherine Hristow
Vice President
Interim Receiver and
Trustee in Bankruptcy for
Fantom Technologies Inc

DATED at Toronto, Ontario, this 13th day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148 (the "Pension Plan");**

TO:	**Morneau Sobeco** 895 Don Mills Road, Suite 700 One Morneau Sobeco Centre Toronto ON M3C 1W3
Attention:	Al Kiel Partner **Administrator of the Pension Plan**
AND TO:	**General Publishing Co. Limited** 895 Don Mills Road 400-2 Park Centre Toronto ON M3C 1W3
Attention:	Mary Hainey Manager Human Resources **Employer**

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 22nd day of March, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal ("Tribunal"), within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148, be wound up in full for those members who ceased to be employed effective between April 30, 2002 and August 19, 2002:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Deloitte & Touche Inc.
79 Wellington Street West
Maritime Life Tower
Toronto Dominion Centre,
P.O. Box 29
Toronto ON M5K 1B9
Attention: Paul Denton
Director, Financial Advisory
Services
Trustee in Bankruptcy for
General Publishing Co.
Limited
Graphic Communications
International Union
Local 500M
324 Prince Edward Drive
Suite 10
Toronto ON M8Y 3Z5
Attention: John Bickford
Office Manager
Union

DATED at Toronto, Ontario, this 25th day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act, respecting **Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc., Registration Number 1059146 (the "Pension Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: Bethune Whiston
Principal
Administrator of the Pension Plan

AND TO: **Maksteel Inc.**
7615 Torbram Road
Mississauga ON L4T 4A8
Attention: Jerry Sauer
Manager Human Resources
Employer

ORDER

ON the 22nd day of March 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 22nd day of March, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc. Inc., Registration Number 1059146, be wound up in full for those members who ceased to be employed effective between July 10, 2001 and December 14, 2001, for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **A significant number of members of the Pension Plan ceased to be employed by the Employer as a result of the discontinuance of all or part of the business of the Employer or as a result of the reorganization of the business of the Employer.**
5. **All or a significant portion of the business carried on by the Employer at a specific location was discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Ernst & Young Inc.
222 Bay Street, 16th Floor
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Sharon Hamilton
Manager
Interim Receiver for
Maksteel Inc.

AND TO: **United Steelworkers of**
America Local 5958
1031 Barton Street East
Hamilton ON L8L 3E3
Attention: Bryan Adamczyk
Staff Representative
Union

DATED at Toronto, Ontario, this 4th day of June, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make an Order under section 69 of the Act respecting **Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171 (the "Pension Plan");**

TO: **London Life Assurance Company**
255 Dufferin Avenue
London ON N6A 4K1
Attention: Darlene Sundercock
Wind-up Specialist
Group Retirement Services
Administrator of the Pension Plan

AND TO: **Denton Technologies Inc.**
30 Casebridge Court
Scarborough ON M1B 3M5
Attention: Judy Coish
Office Manager
Employer

ORDER

ON the 28th day of January 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal to make an Order dated the 28th day of January, 2004, pursuant to subsection 69(1) of Act to the Administrator and to the Employer to wind up in whole Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal, ("Tribunal") within the time prescribed by subsection 89(6) of the Act.

IT IS THEREFORE ORDERED that the Retirement Plan for the Employees of Denton Technologies Inc., Registration Number 1015171, be wound up in full effective December 13, 2001 for the following reasons:

1. **There was a cessation or suspension of Employer contributions to the pension fund.**
2. **The Employer failed to make contributions to the pension fund as required by the Act or regulations.**
3. **The Employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).**
4. **All or a significant portion of the business carried on by the Employer at a specific location is discontinued.**

PURSUANT TO subsection 69(2) of the Act, the Administrator is required to give notice of this Order to the following persons by transmitting a copy hereof:

Grant Thornton Limited
PO Box 55, Royal Bank Plaza
19th Floor, South Tower
Toronto ON M5J 2P9
Attention: Jonathan Krieger, CA, CIRP
Vice President
Trustee in Bankruptcy and Receiver of Denton Technologies Inc.

DATED at Toronto, Ontario, this 28th day of June, 2004.

Tom Golfetto
Director, Pension Plans Branch by Delegated Authority from the Superintendent of Financial Services

Consents to Payments of Surplus Out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of Hanson & Wells Inc., Registration No. 909713;**

TO: **McGean-Rohco, Inc.**
c/o Torkin Manes Cohen Arbus llp
151 Yonge Street, Suite 1500
Toronto ON M5C 2W7

Attention: Warren S. Rapoport
Agent for McGean-Rohco, Inc.
Applicant

CONSENT

ON or about January 28, 2004, the Superintendent of Financial Services caused to be served on McGean-Rohco, Inc. a Notice of Proposal dated January 28, 2004 to consent, pursuant to subsection 78(1) of the Act, to a payment out of the Pension Plan for Employees of Hanson & Wells Inc., Registration No. 909713 (the "Plan"), to McGean-Rohco, Inc., in the amount of $368,855.50 (representing 50% of the Wind Up Surplus in the Plan of $737,711.00 determined as at November 30, 1993), plus 50% of the interest, earnings and experience gains (net of all investment and experience losses thereon) on the Wind Up Surplus from November 30, 1993 to the date of distribution of the said payment, minus 50% of all reasonable costs and expenses incurred by the Plan Administrator in the administration and wind up of the Plan, and minus $25,000 representing 50% of a contingency reserve to cover any unforeseen liabilities, all of the above being in accordance with the terms of the Surplus Sharing Agreement dated March 19, 2002.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Plan to McGean-Rohco, Inc. the amount of $368,855.50 (representing 50% of the Wind Up Surplus in the Plan of $737,711.00 determined as at November 30, 1993), plus 50% of the interest, earnings and experience gains (net of all investment and experience losses thereon) on the Wind Up Surplus from November 30, 1993 to the date of distribution of the said payment, minus 50% of all reasonable costs and expenses incurred by the Plan Administrator in the administration and wind up of the Plan, and minus $25,000 representing 50% of a contingency reserve to cover any unforeseen liabilities.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 26th day of March, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Ms. Sharon Carew
Director, Global Human
Resources
PricewaterhouseCoopers
Inc.
Ms. Dona L. Campbell
Sack Goldblatt Mitchell

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for the Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807;**

TO: **WCI Canada Inc.**
866 Langs Drive
Cambridge, Ontario
N3H 2N7
Attention: Richard Laba
President
Applicant and Employer

CONSENT

ON or about January 6, 2004, the Superintendent of Financial Services caused to be served on WCI Canada Inc. a Notice of Proposal dated January 6, 2004 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for the Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No.0427807, to WCI Canada Inc. in the amount of $286,749 as at January 30, 1998, adjusted for expenses and investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for the Hourly Employees of WCI Canada Inc. Cambridge Location, Registration No. 0427807, to WCI Canada Inc. in the amount of $286,749 as at January 30, 1998, adjusted for expenses and investment earnings thereon to the date of payment.

DATED at Toronto, Ontario, this 26th day of March, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Marc Vigneault - Standard Life

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration Number 0223404;**

TO: **Valeo Engine Cooling Company**
4100 North Atlantic Blvd.
Auburn Hills, MI
48326 USA

Attention: Mr. Jerome Pedretti
Employer and
Administrator of the Plan

CONSENT

ON or about March 1, 2004, the Superintendent of Financial Services caused to be served on Valeo Engine Cooling, Company a Notice of Proposal dated March 1, 2004, to consent, pursuant to subsection 78(1) of the Act, to the payment out of the Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration Number 0223404, to Valeo Engine Cooling, Company in the amount of $1,041,059 as at December 31, 1998, adjusted for any investment income or losses and for costs and expenses incurred in respect of the Plan wind up and distribution of surplus.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Salaried Employees of Valeo Engine Cooling, Company, Registration Number 0223404, to Valeo Engine Cooling, Company in the amount of $1,041,059 as at December 31, 1998, adjusted for any investment income or losses and for costs and expenses incurred in respect of the Plan wind up and distribution of surplus.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements, including benefits and benefit enhancements pursuant to the surplus sharing agreement dated April 30, 2002, between the Applicant and all members and former members of the Plan (as defined in the application), and any other payments to which the members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for.

DATED at Toronto, Ontario, this 20th day of April, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Paul Litner,
Osler Hoskin & Harcourt LLP
Michael Mazzuca
Koskie Minski

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Federal White Cement Limited Pension Plan for Designated Executives, Registration Number 0996819;**

TO: **Federal White Cement Limited**
P.O Box 548
Woodstock ON N4S 7Y5

Attention: Mr. Antonio M. A. Lopes, CA, MBA
Controller

CONSENT

ON or about December 1, 2003, the Superintendent of Financial Services caused to be served on Federal White Cement Limited a Notice of Proposal dated November 25, 2003 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819, to Federal White Cement Limited in the amount of $173,300 as at December 31, 2002, plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Federal White Cement Limited Pension Plan for Designated Executives, Registration No. 0996819, to Federal White Cement Limited in the amount of $173,300 as at December 31, 2002, plus interest, at the fund rate of return thereon, to the date of payment.

DATED at Toronto, Ontario, this 21st day of May, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the **Agnew Group Inc. Retirement Plan, Registration Number 0552802 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
c/o McMillan Binch LLP
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3
Attention: Susan Nickerson
Applicant

CONSENT

ON or about April 6, 2004, the Superintendent of Financial Services caused to be served on PricewaterhouseCoopers Inc. (Receiver and Manager of the assets of Agnew Group Inc.) a Notice of Proposal dated April 6, 2004, to consent, pursuant to subsection 78(1) of the Act, to the payment out of the Agnew Group Inc. Retirement Plan, Registration Number 0552802, to PricewaterhouseCoopers Inc. in the amount of $505,430 (representing 35% of the Wind Up Surplus in the Plan of $1,446,787 determined as at May 1, 2003), plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Agnew Group Inc. Retirement Plan, Registration Number 0552802, to PricewaterhouseCoopers Inc. in the amount of $505,430 (representing 35% of the Wind Up Surplus in the Plan of $1,446,787 determined as at May 1, 2003), plus investment earnings thereon to the date of payment.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits including members' share of the negotiated surplus and any other payments to which members, former members, and any other persons are entitled under the Plan have been paid purchased or otherwise provided for.

DATED at Toronto, Ontario, this 28th day of May, 2004.

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Al Kiel, Morneau Sobeco

Declarations that the Pension Benefits Guarantee Fund Applies to Pension Plans - Subsection 83(1) of the *Pensions Benfits Act*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Sealcraft Inc., Registration Number 995522;**

TO:	**PricewaterhouseCoopers Inc.** PO Box 82 Royal Trust Tower, Suite 3000 Toronto Dominion Centre Toronto ON M5K 1G8
Attention:	Ms. Lois Reyes Human Resource Services **Administrator**
AND TO:	**Sealcraft Inc.** 6525 Northam Dr. Mississauga ON L4V 1J2
Attention:	Ms. Joan Shepherd, Personnel Manager **Employer**
AND TO:	**Schwartz Levitsky** Feldman Inc. 1167 Caledonia Road Toronto ON M6A 2X1
Attention:	Mr. Richard Kline **Trustee in Bankruptcy**

DECLARATION

WHEREAS

1. The Pension Plan for Employees of Sealcraft Inc., (the "Plan"), is registered under the Act as Registration Number 995522; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. administrator of the Plan on December 23, 2002; and
4. On January 9, 2004, the Superintendent of Financial Services issued an Order that the Plan is to be wound up effective October 16, 2002; and
5. On January 16, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002, which report is currently under review by staff who have requested additional information from the Administrator ; and
6. On January 16, 2004, the Administrator also filed an application for a Declaration that the Guarantee Fund applies to the Plan, based on the said wind up report.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The Administrator has determined the wind up funded ratio of the Plan to be 52.1%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the appointed Administrator to be $410,800.
3. The Employer, Sealcraft Inc., was assigned into bankruptcy on October 28, 2002.
4. The trustee in bankruptcy for Sealcraft inc. had advised the Administrator that there

are no funds available for distribution to the ordinary unsecured creditors.

5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. If funds become available for the Plan from the estate of Sealcraft Inc., the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario, this 22nd day of April, 2004.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented by The United Steel Workers of America, Registration Number 289439 (the "Plan");**

TO: **PricewaterhouseCoopers Inc.**
Royal Trust Tower, Suite 3000
PO Box 82,
Toronto Dominion Centre
Toronto ON M5K 1G8
Attention: Mr. Tony Karkheck
Human Resource Services
Appointed Administrator

AND TO: **Port Colborne Iron Works Limited**
PO Box 66
Port Colborne ON L3K 5V7
Attention: Edward B. Magee Jr.
President
Employer

AND TO: **BDO Dunwoody Limited**
37 Dorothy Street
Welland ON L3B 3V6
Attention: Mr. David Ponting, Partner
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 4763**
2601 Highway 20 East
Unit 7
Fonthill ON L0S 1E6
Attention: **Union Representative for the members of the Plan**

DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Port Colborne Iron Works, Limited who are Members of the Bargaining Unit Represented By The United Steel Workers of America, is registered under the Act as Registration Number 289439 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. administrator of the Plan on October 8, 2003; and
4. On March 8, 2004, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan; and
5. On March 22, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and
6. On May 3, 2004, the Superintendent of Financial Services issued an order that the Plan be wound up effective October 25, 2002 through November 12, 2002; and
7. The Administrator's preliminary actuarial estimate of the deficit in the Plan as at November 12, 2002 is $378,900 with a wind up funded ratio of 59.9% for the Plan; and
8. On March 19, 2004, the Superintendent approved commencement of pensions to

new retirees at the reduced level of 59.9% until further notice; and

9. As of May 5, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the notice of proposal to make the declaration referred to in 5. above.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Port Colborne Iron Works, Limited, was adjudged bankrupt on February 11, 2003.
2. The Administrator has estimated the wind up funded ratio of the Plan to be 59.9%.
3. Without any recovery from the estate of the Employer, the potential claim against the Guarantee Fund as at the wind up date would be of the order of $378,900.
4. The trustee in bankruptcy has advised the Administrator that unsecured creditors such as the Plan cannot expect more than 25% of their claim to be settled from the Employer's estate.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario this 21st day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the Act respecting the **Pension Plan for the Employees of United Tire & Rubber Co. Limited Represented by United Steel Workers of America, Local 3950, (the "Pension Plan") Registration Number 0424671;**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5G 1G8
Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

AND TO: **United Tire & Rubber Co. Limited**
275 Belfield Road
Rexdale ON M9W 5C6
Attention: Raymond J. Fernandes
Chief Financial Officer
Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Rick Kanabar
Manager
Receiver and Manager for United Tire & Rubber Co. Limited

AND TO: **Schonfeld Inc.**
Suite 2400, 390 Bay Street
Toronto ON M5T 1N1
Attention: Harlan Schonfeld
Trustee in Bankruptcy for United Tire & Rubber Co. Limited

AND TO: **United Steel Workers of America, Local 3950**
234 Eglinton Avenue East
Suite 800
Toronto ON M4P 1K7
Attention: Jeff Richardson
National Representative
Union

DECLARATION

WHEREAS:

1. The Pension Plan for the Employees of United Tire & Rubber Co. Limited Represented by United Steel Workers of America, Local 3950, Registration No. 0424671 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective March 14, 2000; and
4. The Superintendent of Financial Services Commission appointed PricewaterhouseCoopers Inc. as the

administrator (the "Administrator") of the Pension Plan on May 18, 2000; and

5. On March 31, 2004, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated March 31, 2004 to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of $315,302 as at March 14, 2000 and an estimated claim against the Guarantee Fund as at March 14, 2000 of $288,744. Furthermore, the Actuarial Certification filed by the Administrator and dated March 16, 2004 stipulates that there will be a claim against the Guarantee Fund as at July 1, 2004.
2. Ernst & Young was appointed Receiver and Manager of United Tire & Rubber Co. Limited on February 15, 2000, and Schonfeld Inc. was appointed Trustee in Bankruptcy on March 14, 2000.
3. The Trustee in Bankruptcy has advised the Administrator that there are no funds available from the estate of United Tire & Rubber Co. Limited to make payments to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 25th day of May, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the PBA respecting the **Employees Retirement System of ABC Rail Limited (the "Pension Plan") Registration Number 0104197;**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

AND TO: **ABC Rail Limited**
2001 Butterfield Road
Suite 502
Downers Grove, Illinois, 60515

Attention: June Tushar
Manager, Employee Benefits
Employer

AND TO: **Teamsters Joint Council 79**
255 Morningside Avenue
Scarborough ON

Attention: Peter Mills
President
Union

DECLARATION

WHEREAS:

1. The Employees Retirement System of ABC Rail Limited, Registration Number 0104197 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, the "Act") c. P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 6, 1991; and
4. The Superintendent of Financial Services appointed PricewaterhouseCoopers Inc. as the administrator (the "Administrator") of the Pension Plan on February 7, 2003; and
5. On March 11, 2004, I issued a Notice of Proposal dated March 11, 2004, to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Pension Plan was established effective July 9, 1987 pursuant to a collective agreement between the Employer and Teamsters Joint Council No. 9 (formerly the "Canadian Conference of Teamsters,

Chemical, Energy and Allied Workers, Local 2175) and was registered by the Financial Services Commission (formerly the "Pension Commission of Ontario") in July 1996.

2. On April 1, 2004, I issued an order to wind up the Pension Plan effective November 6, 1991 pursuant to section 69 of the Act.
3. At the date of the Administrator's appointment by the Superintendent, the Pension Plan held no assets as the Employer never made any contributions to the Pension Plan. The Pension Plan is non-contributory for plan members.
4. The Administrator has advised that it conducted an investigation and found no evidence that the Employer has any assets in Canada that might be pursued to help fund the deficit. The Administrator further advises that the Employer's parent company, ABC Rail Products Corporation commenced Chapter 11 proceedings under the United States Bankruptcy Code in October, 2001. The Administrator said it also investigated the possibility of pursuing recovery of the Pension Plan's shortfall against the parent company in the Chapter 11 proceedings but concluded that the likelihood of recovery from this source is remote and that it is not cost effective to pursue this avenue of recovery further.

The Administrator also found no evidence of any agreement between the Employer and its parent company providing that the parent company would fund the shortfall in the Pension Plan and has concluded that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 26th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Moyer Vico Corp., Registration Number 465070;**

TO:	**Morneau Sobeco** 895 Don Mills Road, Suite 700 One Morneau Sobeco Centre Toronto ON M3C 1W3
Attention:	Ms. Pauline Frenette Associate Consultant **Administrator**
AND TO:	**Moyer Vico Corp.** 25 Milvan Drive Weston ON M9L 1Z1
Attention:	Adam Okhai, President & CEO. **Employer**
AND TO:	**Mintz and Partners Limited** 1446 Don Mills Road, Suite 100 Don Mills ON M3B 3N6
Attention:	Daniel R. Weisz, Senior Vice-President **Trustee in Bankruptcy**
AND TO:	**Industrial Wood & Allied** Workers of Canada, Local 1-700 2088 Weston Road Toronto ON M9N 1X4
Attention:	Ron Diotte, President, Local 1-700 **Union representative for the members of the Plan**

DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Moyer Vico Corp. (the "Plan"), is registered under the Act as Registration Number 465070; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On October 26, 2000, the Superintendent of Financial Services (the "Superintendent") issued an Order that the Plan was to be wound up effective October 16, 2002; and
4. On July 10, 2002, the Superintendent appointed Morneau Sobeco as Administrator of the Plan to replace the prior appointed Administrator, Arthur Andersen Inc.; and
5. On February 11, 2004, the Administrator filed a wind up report for the Plan effective October 16, 2002; and
6. On March 18, 2004, the Administrator filed an application for a declaration that the Guarantee Fund applies to the Plan, based upon the said wind up report; and
7. On March 31, 2004, the Superintendent approved distribution of the Plan's assets in accordance with the wind up report, conditional upon any additional funding that may be required from the Guarantee Fund with respect to the defined benefits under the Plan; and
8. On April 27, 2004, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and
9. As of June 14, 2004, no request for a hearing before the Financial Services Tribunal has been made in respect of the notice of proposal to make the declaration.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Administrator has determined the wind up funded ratio of the defined benefit portion of the Plan to which the Guarantee Fund would apply, to be 5.91%.
2. The potential claim against the Guarantee Fund as at the wind up date is estimated by the administrator to be $107,739.00.
3. The Employer was assigned into bankruptcy on November 13, 1997.
4. The trustee in bankruptcy for Moyer Vico Corp. has advised the Administrator that there are no funds available from the bankrupt Employer's estate for distribution to the Plan.
5. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
6. If funds become available for the Plan from the estate of the Employer, the Administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.

DATED at North York, Ontario this 18th day of June, 2004.

Tom Golfetto
Director, Pension Plans Branch

Allocations of Money from the Pension Benefits Guarantee Fund

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under section 83 of the Act relating to the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Limited, Registration Number 384313 ("the Plan");**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3
Attention: Mr. David R. Kearney
Appointed Plan Administrator ("Administrator")

AND TO: **Marsh Engineering Limited**
118 West Street
Port Colborne ON L3K 4C9
Attention: Charlotte Watson
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington ON L7L 6B8
Attention: Ronald Bake
President
Participating Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street, Suite 1400
BCE Place
Toronto ON M5J 2V1
Attention: Robert Paul
Partner
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 4433**
2601 Highway 20, East
Unit 7
Fonthill ON LO5 1E6
Attention: Bryan Adamczyk
Union representative of the plan members

ALLOCATION

WHEREAS on the 27th day of August, 2003, the Superintendent of Financial Services declared, pursuant to sections 83 and 85 of the Act, that the Pension Benefits Guarantee fund (the "Guarantee Fund") applies to the Plan,

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.S.O. 1990.eg. 909, under the Act (the "Regulation"), an amount not to exceed $3,888,700.00 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario this 20th day of April, 2004.

K. David Gordon
Deputy Superintendent, Pensions
By Delegated Authority from the
Superintendent of Financial Services.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting the **Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc., (the "Pension Plan") Registration Number 0335802;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Toronto ON M3B 3K4
Attention: Mr. Robin Pond, MBA, CFA
Partner
Administrator of the Pension Plan

THIRD ALLOCATION

WHEREAS on December 17, 2002, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $287,300,000 (Third Allocation) which together with the Interim Allocation, the Second Interim Allocation and the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 13th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act respecting **The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, (the "Pension Plan") Registration Number 0335810;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Toronto ON M3B 3K4
Attention: Mr. Robin Pond, MBA, CFA
Partner
Administrator of the Pension Plan

THIRD ALLOCATION

WHEREAS on December 17, 2002, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall further allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $42,700,000 (Third Allocation) which together with the Interim Allocation, the Second Interim Allocation and the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 13th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981;**

TO: **Morneau Sobeco**
895 Don Mills Road
One Morneau Sobeco Centre
Suite 700
Toronto ON M3C 3W3
Attention: Mr. David R. Kearney
Administrator

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7
Attention: Mr. Philip Kan, Manager
Trustee in Bankruptcy for Gallaher Thorold Paper Co.

AND TO: **International Union of Operating Engineers Local 772**
370 Main Street East, Suite 302
Hamilton ON L8N 1J6
Attention: Greg Hoath, President
Union representing members of the Plan

AND TO: **Communications Energy and Paper Workers Union of Canada Locals 290 and 1521**
5890 Aspen Court
Niagara Falls ON L2G 7V3
Attention: Michael Lambert
Union representing members of the Plan

ALLOCATION

WHEREAS on the 8th day of January, 2003 a declaration was issued pursuant to sections 83 and 89 of the Act that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $6,383,240.00 determined as of April 1, 2004 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 18th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Employees Retirement System of ABC Rail Limited (the "Pension Plan") Registration Number 0104197;**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82
Royal Trust Tower, Suite 3000
Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Lois J. Reyes
Manager
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on May 26th, 2004, I declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an interim amount not to exceed $113,860 which together with the a final Allocation and the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 26th day of May, 2004.

K. David Gordon
Deputy Superintendent, Pensions

FINACIAL SERVICES TRIBUNAL ACTIVITIES

Appointment of FST Board Members

O.C.	Effective Appointment Date	Expiry Date
McNairn, Colin (Vice-Chair)		
O.C. 1192/2004	June 9, 2004	September 8, 2004
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair Acting)		
O.C. 1193/2004	June 9, 2004	September 8, 2004
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Moore, C.S. (Kit)		
O.C. 1194/2004	June 9, 2004	September 8, 2004
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

**** Or on the day FSCO/OSC merges, if earlier.**

Pension Hearings Before the Finacial Services Tribunal

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The Consent Order dated October 22, 2002, extended the time for the Superintendent's response under this Order.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order

directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions. The April 28, 2003 pre-hearing conference did not proceed at the request of the parties. On May 30, 2003, the parties asked that the matter continue to be adjourned sine die pending resolution of the issues in the proceeding. On May 12, 2004, the request for hearing was withdrawn.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal ("NOP") dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475. The Superintendent's reasons for refusing to consent to the City's application, as set forth in the NOP, are summarized as follows:

- the Plan was subject to a trust from its inception, the City had not reserved to itself the power to revoke that trust and that therefore the City had not demonstrated that the Plan properly provided for the payment to the employer of surplus on wind up as required under paragraph 79(3)(b) of the Act; and
- the City had not demonstrated that the requisite level of consents had been obtained to satisfy the requirements of paragraph 8(1)(b) of the Regulation.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned sine die.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference was held on April 17, 2003 at which time a hearing date was set.

The matter was originally heard on July 14, 2003 by a three-member panel of the Tribunal comprised of Ms Martha Milczynski, Mr. Louis Erlichman and Mr. Paul Litner, as Chair of the Panel. Subsequent to the date of that hearing, Ms Milczynski was appointed as a Prothonotary of the Federal Court of Canada. As a result, she was unable to participate in the decision. Mr. Colin McNairn, a Vice Chair of the Tribunal, was designated as a member of the panel, in replacement of Ms Milczynski, after it became clear that the two remaining members of the panel could not agree on the disposition of the proceeding. The parties agreed to this process

and the matter was then re-heard before the reconstituted panel on May 14, 2004.

When the matter was first heard on July 14, 2003, the City and the Superintendent submitted they had subsequently agreed that the requisite level of Plan member and former member consents had been obtained to meet the requirements of the Act and the Regulation. The Tribunal granted a Consent Order acknowledging that the City had satisfied the requisite levels of consents under paragraph 8(1)(b) of the Regulation, a prerequisite for obtaining the Superintendent's consent under section 78 of the Act. Therefore, the remaining issue for the Tribunal to decide was whether or not the Plan provides for the payment of surplus to the City on its wind up.

In its majority reasons dated June 24, 2004, the Tribunal concluded that the Plan does not validly provide for payment of surplus to the City on the wind up of the Plan given that the Plan amendments providing for such payment were inconsistent with the trust in favour of Plan members that was found to exist in respect of the funding vehicles for the Plan. The Superintendent was therefore, directed to carry out the proposal, contained in the Notice of Proposal, to refuse to consent to the City's surplus withdrawal application. The Reasons for Decision dated June 24, 2004, are published in this bulletin on page 123.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau, a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination, pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue which it was agreed would be dealt with through a motion. The parties agreed that the issue on the motion was whether, given the November 19, 2001 decision of the Superior Court of Justice in Board of Trustees of the *Electrical Industry of Ottawa Pension Plan v. Cybulski*, Court File No. 01-CV-18268, the Tribunal has jurisdiction to proceed in the circumstances of this case.

At the motion hearing on November 29, 2002, the Superintendent argued that the Tribunal did not have jurisdiction to hear the Applicant's request because the issue that is the subject of the Applicant's request for hearing was decided by the Ontario Superior Court of Justice. The Superintendent therefore argued that the doctrine of issue estoppel applies and precludes the Tribunal from holding a hearing. In its majority reasons dated October 27, 2003, the Tribunal determined that the doctrine of issue estoppel does not apply and that even if it did, this was a proper case for the exercise

of the Tribunal's discretion to refuse to apply that doctrine. The Reasons for Decision dated October 27, 2003, were published in Volume 13, Issue 1 of the Pension Bulletin.

At a resumption of the pre-hearing conference on November 12, 2003, hearing dates for February 2-3, 2004 were agreed to.

On December 17, 2003, an application for party status was filed by the Board of Trustees, Electrical Industry of Ottawa Pension Plan. At a resumption of the pre-hearing conference on January 12, 2004, full party status was granted, and the hearing dates were changed. At the hearing on March 30, 2004, the panel reserved its decision.

Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;

On June 7, 2002, Molson Canada requested a hearing regarding the five Notices of Proposal issued by the Superintendent each dated May 5, 2002, proposing to make orders that the various Molson Canada pension plans be wound up in part.

The pre-hearing conference scheduled for October 28, 2002 was adjourned sine die on consent of the parties.

On July 22, 2004, Molson Canada withdrew the five Requests for Hearing.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan and to;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund (the "First Proposal"); and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust (the "Second Proposal").

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees

Pension Committee, representing the members and retired members of the Plan. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

At a resumption of the pre-hearing conference on May 5, 2003, the parties agreed to attend a settlement conference to deal with the issue of expenses. The settlement conference scheduled for July 7, 2003, was rescheduled to August 19, 2003.

Evidence was heard on October 27-29, 2003 and on January 7-8, 2004 and oral argument took place on January 26, 2004. In its Reasons For Decision dated March 4, 2004, the Tribunal ordered the Superintendent to carry out the First Proposal contained in the Notice of Proposal with the modification that the amounts to be reimbursed (with foregone income thereon) should be specified as per the direction of the Tribunal. The Tribunal also ordered the Superintendent to refrain from carrying out the Second Proposal contained in the Notice of Proposal. The Reasons For Decision dated March 4, 2004, were published in Volume 13, Issue 2 of the Pension Bulletin.

On March 30, 2004, the DCA Employees Committee filed a notice of appeal in the Ontario Superior Court of Justice (Divisional Court).

On April 2, 2004, Kerry (Canada) Inc. made a request to the Tribunal for an order of costs against the DCA Employees Pension Committee. On April 28, 2004, the Tribunal issued a disposition with respect to the request for costs, declining to make the requested order for costs. The Disposition Of Request For Costs dated April 28, 2004, is published in this bulletin on page 121.

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and

- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, Kerry (Canada) Inc. filed an application for party status.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed to hearing dates. On March 2-3, 2004, the Tribunal heard the evidence of the witnesses who were put forward in this matter.

On April 8, 2004, the Tribunal heard argument from the parties with respect to the DCA Employees Pension Committee's request that the Tribunal issue reasons for decision concerning the earlier motions for disclosure brought by the Committee. The Tribunal denied the request. The Tribunal also heard argument from the parties concerning the Applicant's reply submissions, in addition to a request that the argument phase of the hearing be adjourned to permit surreply submissions from the Respondents. The Respondent's argued that the Applicant's reply submissions raised new issues and arguments not previously addressed. The request for adjournment was granted to allow the Respondent's time to prepare, file and serve surreplies to the Applicant's reply. On June 8 and 9, 2004, the Tribunal heard oral arguments from the parties, and reserved its decision.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be

employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel Inc.

On November 7, 2002, John Hughes filed an application for party status.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that they would be bringing motions with respect to disclosure. On May 13, 2003, the parties agreed to adjourn the May 14, 2003 motion date, to permit the parties time to resolve the disclosure issues altogether or at least narrow the issues to be determined by the Tribunal. The motion was rescheduled to August 7, 2003 but it did not proceed.

On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;

On March 17, 2003, Slater Stainless Corp. requested a hearing regarding the Superintendent's Notice of Proposal dated February 17, 2003, to make an order pursuant to section 88 of the Act, requiring the preparation of a new valuation report for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464.

The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors*

Arrangement Act, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777, FST File Number P0233-2004;

On January 21, 2004, Gardena Canada Ltd. (the "Employer"), requested a hearing regarding the Notice of Proposal dated December 19, 2003 of the Deputy Superintendent, Pensions, to refuse to consent to the application dated March 12, 2002, submitted by the Employer for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act.

On February 25, 2004, David Evans, a member of the Plan, filed an application for party status. On March 5, 2004, applications for party status were filed by Raymond Bamsey, Ernest Burke, Pat Dobson, Leone Douglas, Gloria Dunn, Karen Garvey, Doreen Harding, Connie Heron, James Peter and Patricia Sinden, who are active, deferred vested and retired members of the Plan ("The Ten Members").

On March 19, 2004, Kevin MacRae, a member of the Plan, filed an application for party status. On March 24, 2004, Liviana Macoretta, a member of the Plan, filed an application for party status, which was subsequently withdrawn on April 20, 2004.

At the pre-hearing conference on May 6, 2004, the Ten Members were granted full party status on consent of all parties. The applications for party status filed by Kevin MacRae and David Evans were denied as no one was in attendance to speak to the respective applications.

At a settlement conference on July 29, 2004, the parties settled the matter.

Hugo Jaik, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0235-2004;

On February 16, 2004, Hugo Jaik, a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated January 28, 2004, to refuse to make an order requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit, and requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

A pre-hearing conference was held on May 25, 2004. On July 15, 2004, the Board of Trustees of the Electrical Industry of Ottawa Pension Trust Fund filed an application for party status. At a resumption of the pre-hearing conference on July 26, 2004, full party status was granted to the Board of Trustees.

At a settlement conference on August 5, 2004, the parties were unable to settle the matter. A pre-hearing conference is scheduled to resume on August 27, 2004, and the hearing date of September 27, 2004 was cancelled.

Ronald Ford, Bridgestone/Firestone Canada Inc., Pension Plan - 1992, Registration Number 251348; FST File Number P0238-2004;

On March 11, 2004, Ronald Ford, a member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated February 18, 2004, to refuse to make an Order pursuant to section 87 of the Act requiring the payment of a disability benefit to the Applicant from the "Firestone Plan".

On March 25, 2004, Bridgestone/Firestone Canada Inc filed an application for party status. On April 6, 2004, an application for party status was filed by the CAW-Canada and its Local 1411.

The pre-hearing conference scheduled for June 22, 2004 did not proceed. On June 21, 2004, the parties requested the pre-hearing conference be adjourned sine die due to settlement discussions.

On August 5, 2004, the request for hearing was withdrawn.

Peter Stopyn, Douglas Llewellyn, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67, Registration Number 381525; FST File Number P0239-2004;

On May 13, 2004, Peter Stopyn and Douglas Llewellyn, former members of the Plan, a multi-employer plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated April 23, 2004, proposing to refuse to make an order:

- requiring the Trustees of the Plumbing and Pipefitting Workers' Benefit Plans Local 67 (the "Board"), the administrator of the Plan, to refrain from suspending the retirement benefits of former members of the Plan who return to work with a participating employer after the commencement of their retirement benefits;
- requiring the Board to limit the suspension of the retirement benefits of former members of the Plan who return to work with a participating employer after the commencement of retirement benefits to situations where the returning former member works more than 200 hours in any calendar year and not where the returning former member is paid for more than 200 hours but does not work more than 200 hours; or
- requiring the Trustees to amend the Plan so that the Plan text reflects the requirements listed in paragraphs (a) or (b) above as the case may be.

On July 13, 2004, the Trustees of Local 67, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Pension Plans filed an application for party status.

A pre-hearing conference is being scheduled.

Constantin Munteanu, Portship Employees Negotiated Pension Plan, Registration Number 0393199; FST File Number P0240-2004;

On June 10, 2004, Constantin Munteanu a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal dated April 8, 2004, proposing to refuse to make an Order directing Pascol Engineering, formerly Port Arthur Shipbuilding Company, to make an additional payment from the fund for the Plan in respect of Mr. Munteanu's pension benefits or the commuted value of his pension benefits. The matter is pending.

Power Workers' Union, Kinectrics Inc. Pension Plan, Registration Number 1075787; FST File Number P0242-2002;

On July 15, 2004, the Power Workers' Union requested a hearing regarding a refusal, evidenced by a letter from the Pension Plan Branch of the Financial Services Commission dated May 28, 2004, to issue an Order under s.87 of the *Pension Benefits Act* requiring the administrator of the Pension Plan to take certain action and to refrain from taking other action in order to bring the Pension Plan into compliance with the Act. The Power Workers' Union had requested that the Superintendent issue a Notice of Proposal requiring Kinectrics Inc. to immediately cease taking a contribution holiday, to prepare and file an updated actuarial report, and to commence funding the Pension Plan pursuant to the updated actuarial report. The Pension Plan Branch took the position, in its May 28 letter, that the Pension Plan was being funded in accordance with the latest filed actuarial report and that no new actuarial report was yet due as the filed report did not disclose a funding concern.

On July 23, 2004, Kinectrics Inc filed an application for party status.

A pre-hearing conference is being scheduled.

The following cases are adjourned *sine die:*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554, and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;**
  At a pre-hearing conference on July 6, 1999, the matter was adjourned sine die.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**
  Matter continues to be adjourned sine die pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;**
  Matter adjourned sine die at a pre-hearing conference on February 21, 2000.

- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;**
  At the pre-hearing conference on June 27, 2000, the matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;**
  Matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;**
  At the request of the parties, this matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;**
  The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;**
  At a settlement conference on October 30, 2001, the parties agreed to adjourn the matter sine die pending discussions between the parties.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;**
  On July 10, 2002, the hearing dates were adjourned sine die on consent of the parties.
- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**
  At the pre-hearing conference on October 28, 2002, the matter was adjourned sine die pending the outcome of the *Monsanto* case.
- **George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;**
  On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date sine die, pending finalization of a settlement.
- **Bestfoods Canada Inc., Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration Number 240358, FST File Number P0222-2003;**
  On March 2, 2004, the Tribunal granted the parties' request to defer the disclosure date, and adjourn the March 8, 2004 pre-hearing conference return date, as the parties are engaged in settlement discussions.
- **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003**
  On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary.
- **Boilermakers' National Pension Plan (Canada), Registration Number 0366708, FST File Number P0228-2003**
  On February 4, 2004, the parties agreed to adjourn the matter sine die pending finalization of the terms of a settlement.

- **Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003**

  On February 26, 2004, the matter was adjourned sine die pending the outcome of an application by the Applicant, for judicial review of the Superintendent's Order dated October 6, 2003.

- **Coats Canada Inc., Coats Canada Employees' Pension Plan, Registration Number 288563, FST File Number P0237-2004**

  On March 4, 2004, the Applicant requested agreement from the Superintendent to adjourn this matter sine die pending the outcome of the *Monsanto* case. On March 12, 2004, the Superintendent agreed to the adjournment.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
		No decisions to report

Decisions to be Published

- City of Kitchener
- Kerry (Canada) Inc. (re: Costs)

Financial Services Tribunal Decisions With Reasons

INDEX NO.:	FST File Number P0191-2002
PLAN:	Pension Plan for Employees of Kerry (Canada) Inc. (the "Plan")
DATE OF DECISION:	April 28, 2004
PUBLISHED:	Bulletin 13/3 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a proposal of the Superintendent of Financial Services to order that Kerry (Canada) Inc. reimburse the pension fund of the Pension Plan for the Employees of Kerry (Canada) Inc. (the "Plan") for certain expenses paid from the Plan since January 1, 1985, together with income thereon, and to order that Kerry (Canada) Inc. amend certain expense provisions of the current Plan documents for consistency with the original Plan documents as specified in the proposed order;

AND IN THE MATTER OF a hearing in accordance with subsection 89(8) of the Act;

AMONG:

KERRY (CANADA) INC.
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent
-and-
ELAINE NOLAN, GEORGE PHILLIPS, ELISABETH RUCCIA, KENNETH R. FULLER, PAUL CARTER, R.A. VARNEY and BILL FITZ, being members of the DCA EMPLOYEES PENSION COMMITTEE representing certain of the members and former members of the Pension Plan for the employees of Kerry (Canada) Inc.
Respondents

DISPOSITION OF REQUEST FOR COSTS

The Applicant, Kerry (Canada) Inc., made a request to the Tribunal for an order of costs, in this proceeding, against the DCA Employees Pension Committee (the "Committee"), which request was supported by written submissions. The Committee did not file a response.

We have considered the submissions of the Applicant in light of Rule 48.01 of the Interim Rules of Practice and Procedure of the Tribunal, which sets out criteria for the award of costs to parties, and in light of the Tribunal's Practice Direction on Cost Awards, keeping in mind the general discretion of the Tribunal to award costs under section 24 of the Financial Services Commission of Ontario Act, 1997, as read with section 17.1 of the Statutory Powers Procedure Act.

We are not persuaded that the case has been made out for the requested order for costs in the circumstances of this proceeding. In assessing the Committee's conduct in the course of the proceeding - one of the main factors to which the Applicant has directed our attention - we have given some weight to the fact that the Committee was not represented by counsel and that its representative, a Committee member, was not familiar with all of the procedural niceties of participation in a proceeding of this kind. This is not to suggest that a party to a proceeding before the Tribunal will necessarily avoid the possibility of an order of costs against it simply by choosing not to retain legal counsel.

In all of the circumstances, we decline to make the requested order for costs.

DATED at Toronto, Ontario this 28th day of April 2004.

Colin H.H. McNairn,
Vice-Chair of Tribunal and of the Panel

Shiraz Y.M. Bharmal,
Member of the Tribunal and Chair of the Panel

David A. Short,
Member of the Tribunal and of the Panel

INDEX NO.:	FST File Number P0172-2001
PLAN:	The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475 (the "Plan")
DATE OF DECISION:	June 24, 2004
PUBLISHED:	Bulletin 13/3 and FSCO Website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to s. 78(1) of the Act, submitted by the City of Kitchener for payment of surplus to the Employer dated July 17, 2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

THE CORPORATION OF THE CITY OF KITCHENER
Applicant
- and -
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:
Mr. Paul Litner
Member of the Tribunal and Chair of the Panel
Mr. Louis Erlichman
Member of the Tribunal and of the Panel
Mr. Colin McNairn
Vice Chair of the Tribunal and Member of the Panel

APPEARANCES:
For The Corporation of the City of Kitchener
Ms Elizabeth M. Brown
Ms Stephanie J. Kalinowski

For the Superintendent of Financial Services
Mr. Mark Bailey

HEARING DATES:
July 14, 2003
May 14, 2004

REASONS FOR DECISION OF MR. LITNER

Background

Nature of the Proceedings

This hearing, held in accordance with subsection 89(8) of the Act, relates to an application by The Corporation of the City of Kitchener (the "City") to the Superintendent of Financial Services (the "Superintendent") for the Superintendent's consent to a payment of surplus to the City pursuant to subsection 78(1) of the Act.

The Plan was terminated effective August 1, 1998 and the City is the "employer" under the Plan for purposes of the Act. Accordingly, the City must demonstrate that it has satisfied all requirements of the Act that are preconditions to the distribution of surplus to an employer on plan wind up.

In order to obtain the Superintendent's consent to a payment of surplus to the "employer" on wind up of the Plan pursuant to subsection 78(1) of the Act, the City must satisfy the notice requirements of subsection 78(2) of the Act, as well as the requirements of subsection 79(3) of the Act. By virtue of paragraph 79(3)(d) of the Act, the City must demonstrate that it has complied with all other applicable requirements prescribed under Regulation 909, R.R.O. 1990, as amended (the "Regulation"). In particular, the City must in this case demonstrate that it has met the member consent requirements of paragraph 8(1)(b) of the Regulation.

Only once the City demonstrates that these requirements of the Act and the Regulation have been met, can the Superintendent exercise his discretion to consent to a payment of surplus to an employer under subsection 78(1) of the Act.

Agreed Facts and Documents

The parties prepared and filed with the Tribunal an Agreed Statement of Facts and an Agreed Book of Documents, which I have considered and relied upon in coming to my decision. The Agreed Book of Documents contained copies of the relevant historical Plan documents, the wind up report for the Plan, the application to the Superintendent under section 78 of the PBA and other relevant documents.

I have set forth below the salient facts, which I have taken from the Agreed Statement of Facts. As well, I have referred below to extracts from the historical Plan documents which were taken from the Agreed Book of Documents.

Plan Wind Up

The Plan was wound up effective August 1, 1998 (the "Wind Up Date"). A wind up report dated September 16, 1998 was prepared by the City and its actuary and filed with the Superintendent (the "Wind Up Report"). The Superintendent approved the distribution of assets from the Plan in accordance with the Wind Up Report on April 27, 1999, in order

to provide for the payment of basic benefits to entitled persons as identified in the Wind Up Report. As at the Wind Up Date, the Plan actuary estimated the excess assets (surplus) to be $2,688,000. The parties did not provide us with a more current estimate of the amount of surplus remaining on Plan wind up.

History of the Plan

The Plan was originally established by the City of Kitchener effective October 1, 1946, through By-law 2985 of the City of Kitchener dated September 3, 1946. The terms of the Plan (the "Original Plan Text") were attached as Schedule "B" to By-law 2985. The City also prepared a booklet dated September 1946, describing the terms of the Plan as originally constituted (the "Original Plan Booklet").

From the establishment of the Plan until 1978, the benefits promised under the Plan were funded through Policy No. Gr. PT. 10025, an annuity contract issued to the City by Standard Life Assurance Company of Canada ("Standard Life") effective January 1, 1947 (the "Policy"), which was attached as Schedule "A" to By-law 2985.

The Original Plan Text was amended from time to time. By Endorsement 7 dated July 9, 1959, the Policy was amended to create a "deposit fund" under the Policy (the "Deposit Fund"), to provide a mechanism for the payment of premiums required to purchase certain ancillary benefits offered under the Plan from time to time that were not insured under the Policy.

Effective January 1, 1966, all members of the Plan except firefighters elected to join the Ontario Municipal Employees Retirement System ("OMERS"). The Plan retained the obligations relating to the past service benefits of the (non-firefighter) members who joined OMERS. The remaining (firefighter) members continued to accrue benefits under the Plan and the Policy.

Effective January 1, 1978, the City amended the Plan to significantly improve benefits. Among the improvements, the Plan's benefit formula was upgraded to a final average earnings formula. These changes were embodied in an amended and restated Plan text (the "1978 Plan Text").

Also effective January 1, 1978, the Policy became paid-up (fully insured, such that no further premiums were due) and the City entered into Deposit Administration Contract Gr. P.W. 11788 D.A. with Standard Life (the "Deposit Contract"), to provide a funding mechanism for the benefits under the Plan accruing after January 1, 1978.

Effective July 1, 1989, the remaining (firefighter) members of the Plan joined OMERS and were granted benefits under OMERS for all pensionable service with the City, less benefits fully insured under the Policy. Thus, the "surplus" that remains on wind up of the Plan is comprised of the remaining funds held under the Deposit Contract that were previously used to purchase benefits under the Plan, but are no longer required for that purpose.

Nature of the Plan

The Plan is a defined benefit plan which initially contained a career average earnings benefit formula. As noted above, benefits under the Plan were improved to a final average earnings formula commencing January 1, 1978. Members paid, based on their salaries, a portion of the premiums needed to fund current service benefits under the Plan. The City paid the remaining cost of the premiums.

Surplus Sharing Application

The City offered to share more than two-thirds of the surplus as at the Wind Up Date with the members and former members of the Plan. The City's proposal was accepted by 200 of the 239 members and former members entitled to a payment from the Plan on the Wind Up Date (the "Wind Up Group"). Of the remaining persons in the Wind Up Group, only one individual formally objected to the surplus sharing proposal. All others did not respond. Based on the Agreement reached with the members of the Wind Up Group and paragraph 8(1)(b) of the Regulation, the City filed a surplus withdrawal application with the Superintendent on August 15, 2000. More than one year later on August 23, 2001, the Superintendent issued a Notice of Proposal to refuse to consent to the City's application (the "NOP").

Notice of Proposal

The Superintendent's reasons for refusing to consent to the City's application, as set forth in the NOP, can be summarized as follows:

(a) the Plan was subject to a trust from its inception, the City had not reserved to itself the power to revoke that trust and that therefore the City had not demonstrated that the Plan properly provided for the payment to the employer of surplus on wind up as required under paragraph 79(3)(b) of the Act; and

(b) the City had not demonstrated that the requisite level of consents had been obtained to satisfy the requirements of paragraph 8(1)(b) of the Regulation.

The City and the Superintendent subsequently agreed that the requisite level of Plan member and former member consents had been obtained to meet the requirements of the Act and the Regulation. At the hearing of this matter, this Tribunal granted a Consent Order acknowledging that the City had satisfied the requisite levels of consents under paragraph 8(1)(b) of the Regulation, a prerequisite for obtaining the Superintendent's consent under section 78 of the Act. A copy of the Consent Order is attached hereto as Appendix "A".

Thus, the remaining issue for this Tribunal to decide is whether or not the City has met the requirements of paragraph 79(3)(b) of the Act; namely, whether the Plan provides for the payment of surplus to the City on its wind up.

The Panel

This matter was originally heard on July 14, 2003 by a three-member panel of the Tribunal comprised of Ms Martha Milczynski, Mr. Louis Erlichman and Mr. Paul Litner, as Chair of the

Panel. Subsequent to the date of that hearing Ms Milczynski was appointed as a Prothonotary of the Federal Court of Canada. As a result, she was unable to participate in this decision. Mr. Colin McNairn, a Vice Chair of the Tribunal, was designated as a member of the panel, in replacement of Ms Milczynski, after it became clear that the two remaining members of the panel could not agree on the disposition of the proceeding. The matter was then re-heard before the reconstituted panel on May 14, 2004. The parties agreed to this process.

Analysis

Standard of Review in Applications Under Paragraph 79(3)(b) of the Act

Paragraph 79(3)(b) of the Act provides as follows:

> 79(3) Subject to section 89 (hearing and appeal), the Superintendent shall not consent to an application by an employer in respect of surplus in a pension plan that is being wound up in whole or in part unless,
>
> ...
>
> (b) the pension plan provides for payment of surplus to the employer on the wind up of the pension plan;
>
> ...

In other words, before an application for the payment of surplus on the wind up of a pension plan to an employer can be approved, the Superintendent must be satisfied that the plan "provides for payment of surplus to the employer on wind up".

There has been a great deal of jurisprudence before this Tribunal and its predecessor the Pension Commission of Ontario ("PCO"), and in the courts as to the meaning of paragraph 79(3)(b) of the Act.

The Superintendent's counsel urged us to accept that paragraph 79(3)(b) of the Act establishes a "high threshold" for the employer in establishing its legal entitlement to surplus, relying on the decision of this Tribunal in *Samsonite Canada Inc. v. Superintendent of Financial Services*, (October 21, 2002), FST File Nos. P0166-2001 and P0175-2001 ("*Samsonite*").

In *Samsonite*, the Tribunal considered an application under paragraph 79(3)(b) of the Act in which the applicant employer argued that it had validly amended historical plan and trust provisions restricting the use of trust fund assets to the exclusive benefit of plan members. In considering the particular historical plan documents at issue in *Samsonite*, the Tribunal stated as follows:

> The Company also made submissions that the 1980 amendments were consistent with the amending authority the Company reserved to itself in the original Plan and trust documentation. Such pension plan and trust provisions must, however, be express, unambiguous and clear to satisfy the "high bar" enunciated in *Schmidt v. Air Products* ... In the case at hand, the Company did not satisfy the Tribunal that there was the clear and unambiguous language in either the

Hourly or the Salaried Plan documentation that would permit the Company to participate in any distribution of surplus assets on Plan termination or that would permit an amendment to the Plans to be made subsequently, to give effect to such distribution. The requirements of subsection 79(3)(b) of the PBA have not been met to the high standard required to establish employer entitlement to surplus.

The reference to *Schmidt*, of course, is a reference to the Supreme Court of Canada's decision in *Schmidt v. Air Products Canada Ltd.* (1994), 115 D.L.R. (4th) 631 ("*Schmidt*"). With respect to counsel's position on these issues, I do not interpret the Tribunal's words in the *Samsonite* decision as establishing a higher standard for establishing an employer's legal entitlement to surplus for purposes of the Act. Most certainly, the Supreme Court of Canada in *Schmidt* did not state that there is any higher standard of entitlement that must be demonstrated in a surplus withdrawal situation than in any other case. Rather, entitlement to surplus is a question to be determined on a case by case basis in accordance with the relevant plan documents.

I interpret the Tribunal in *Samsonite* as merely confirming that the employer has the onus of demonstrating that it is legally entitled to surplus according to the principles laid down by the Supreme Court of Canada in *Schmidt* and that the applicant had not demonstrated such entitlement to the satisfaction of the Tribunal in that case.

In fact, the position taken by the Superintendent illustrates the dangers inherent in relying on statements made by this Tribunal in a particular decision as a rule to be followed in all subsequent cases, without taking into account the specific facts or documents at issue in each particular proceeding. The overarching principle laid down by the courts is that in assessing surplus entitlement, whether for purposes of paragraph 79(3)(b) of the Act or otherwise, each case must be decided based upon its own particular facts and the specific plan documents in question. This approach was most recently endorsed by the Ontario Court of Appeal in *Howitt v. Howden Group Canada Ltd.* (1999), 170 D.L.R. (4th) 423 (Ont. C.A.) ("*Howitt*"), where the court stated:

The legislation, however, provides little or no guidance on how to resolve the issue of entitlement to a pension surplus. As a result, pension commissions and courts have had to resolve the issue on a case by case basis by an analysis of the pension plan in question, the funding structures under the plan, and by the application of contract or trust principles. (at p. 425)

In considering applications under subsection 78(1) of the Act, the Tribunal should be guided by several factors. First and foremost are the requirements of the Act. Second, the Tribunal should be guided by decisions of Canadian courts which provide guidance as to the proper legal principles in determining surplus ownership. We must apply these principles to the particular circumstances of each case.

I understand the jurisprudence to interpret paragraph 79(3)(b) of the Act as requiring the applicant to demonstrate that it is legally entitled to surplus. In order to determine entitlement to surplus, it is not sufficient to look only at the

current plan documents. One must examine the plan documentation from its inception to the current date to determine whether the plan has been validly amended from time to time such that the current provisions (on which the applicant typically relies in such applications) are valid.

In my view the proper test to be employed by this Tribunal in determining surplus ownership is best summarized in the following passage from *Schmidt* (at p. 666):

In the absence of provincial legislation providing otherwise, the courts must determine competing claims to pension surplus by a careful analysis of the pension plan and the funding structures created under it. The first step is to determine whether the pension fund is impressed with a trust. This is a determination which must be made according to ordinary principles of trust law. A trust will exist whenever there has been an express or implied declaration of trust and an alienation of trust property to a trustee to be held for specified beneficiaries.

If the pension fund, or any part of it, is not subject to a trust, then any issues relating to outstanding pension benefits or to surplus entitlement must be resolved by applying the principles which pertain to the interpretation of contracts to the pension plan.

If, however, the fund is impressed with a trust, different considerations apply. The trust is not a trust for a purpose, but a classic trust. It is governed by equity, and, to the extent that applicable equitable principles conflict with plan provisions, equity must prevail. The trust will in most cases extend to an ongoing or actual surplus as well as to that part of the pension fund needed to provide employee benefits. However, an employer may explicitly limit the operation of the trust so that it does not apply to surplus.

The employer, as a settlor of the trust, may reserve a power to revoke the trust. In order to be effective, that power must be clearly reserved at the time the trust is created. A power to revoke the trust or any part of it cannot be implied from a general unlimited power of amendment. Funds remaining in a pension trust following termination and payment of all defined benefits may be subject to a resulting trust. Before a resulting trust can arise, it must be clear that all of the objectives of the trust have been fully satisfied. Even when this is the case, the employer cannot claim the benefit of a resulting trust when the terms of the plan demonstrate an intention to part outright with all money contributed to the pension fund. In contributory plans, it is not only the employer's but also the employees' intentions which must be considered. Both are settlors of the trust. Both are entitled to benefit from a reversion of trust property.

I would adopt these principles for determining surplus ownership as the proper test to be employed in deciding applications under paragraph 79(3)(b) of the Act.

Analysis of Plan Documents

I turn now to an analysis of legal entitlement to surplus under the Plan based upon the application of the principles laid down by the

Supreme Court of Canada in *Schmidt* to the plan documents put before us. In so doing, I have also taken into account the purpose and intent of the surplus sharing provisions of the Act and the Regulation, as well as the particular facts of this case.

Current Plan Terms

As noted above, January 1, 1978 was a key date for change within the history of this Plan. Effective as of that date, the City amended the Plan to significantly improve benefits, including upgrading the Plan's benefit formula to a final average earnings formula. Also effective January 1, 1978, the Policy became fully paid up (fully insured, such that no further premiums were due) and the City entered into the Deposit Contract with Standard Life to provide a funding mechanism for Plan benefits that were not payable under the Policy.

The surplus in question in this application is held under and subject to the terms of the Deposit Contract. In the documents before us, there is no evidence that the Deposit Contract was a trust per se nor was there any evidence of an intention to create a trust at the time the Deposit Contract was entered into by the City and Standard Life.

Section 11.03 of the 1978 Plan Text states: "if the plan is discontinued the assets of the plan will be allocated to members of the plan to provide pensions and other benefits according to their entitlements under the terms of the plan. Such allocations will be made in accordance with any applicable provincial legislation". Section 11.04 of the 1978 Plan Text provides that, "if there are any assets remaining after the liabilities for all benefits accrued under the plan have been met, they shall be returned to the City, or shall be used as the City may direct."

All subsequent versions of the Plan contain nearly identical language to that in section 11.03 and 11.04 of the 1978 Plan Text. This is the language that existed at the time of the Plan wind up.

The Superintendent conceded that the provisions of the Plan set forth above, in effect from January 1, 1978 until the Wind Up Date, provide for payment of surplus to the employer within the meaning of subsection 79(3)(b) of the Act. Also, there were no provisions of the Deposit Contract which would compel a result at odds with the clear wording of the Plan granting the employer a right to surplus refund on Plan wind up. I agree.

Thus, the remaining question to be determined is whether the historical Plan documents contained any provisions which would have invalidated the provisions of the 1978 Plan Text, which provide the employer with a right to surplus on Plan wind up.

Prior Plan Documents

As indicated by the Supreme Court of Canada in *Schmidt*, in analyzing historical plan documents one must first determine whether to employ trust or contract principles. If the pension fund is not subject to a trust, then the validity of historical plan amendments is to be determined in accordance with the principles of contract law.

On the other hand, if the pension plan is funded pursuant to a trust, then trust law principles will apply to the determination of surplus ownership. Thus, the first matter that this Tribunal must determine in interpreting the historical Plan documents is whether a trust was in effect prior to January 1, 1978.

Trust or Contract?

The relevant provisions are contained in section 18 of the Original Plan Text, which provides:

The Employer will hold in trust for the benefit of members the group policy and all benefits payable thereunder subject to the provision that the Employer will be credited as a reduction in future premiums with any sum paid by the Assurance Company in excess of the benefits allowed to a withdrawing member. The Employer's liability shall be limited to the amounts paid by the Assurance Company corresponding to the member's benefits and options under the Plan.

The Original Plan Booklet contained similar language to the foregoing. In addition, the Policy provided that the specific benefits referred to in the conditions to the Policy were to be paid to "the Person Assured [the City] in trust, or its assigns."

These are the only references in the Original Plan Text, the Original Plan Booklet, or the Policy of an intention to create a trust. Section 22 of the Original Plan Text gave the City the power to amend, suspend or discontinue the Plan, but also provided that in the event of discontinuance, "no part of the benefits secured by the group policy shall be retained by the Employer".

Counsel for the City advanced three key arguments as to why we should not interpret the Original Plan Text and the Policy to be subject to trust principles:

(i) the Plan was funded pursuant to an insurance contract (i.e., the Policy) which was inconsistent with the creation of a trust;
(ii) there was insufficient evidence under the Plan documents of an intention to establish or create a trust; and
(iii) there was no trust fund.

The Superintendent's counsel submitted that the Plan is clearly subject to a trust and that the trust extends to all benefits or payments under the Plan, including any surplus payable under the Deposit Contract. I will address each of these arguments separately.

(i) Insurance Contract Inconsistent with the Creation of the Trust Counsel for the Applicant urged us to accept that the fact that the Plan was funded pursuant to a group annuity contract meant that contract law principles had to be applied, and that the use of a contract was in and of itself inconsistent with the use of a trust, i.e., the two were mutually exclusive. Counsel for the Superintendent argued that this was a false dichotomy and that it was quite clear based on the case law that an annuity contract could be used and held in trust or subject to a trust.

I accept the position of the Superintendent on this issue. The *Howitt, LaHave* and *Bull Moose Tube* cases, noted below, make it clear that there is no inconsistency in funding a plan pursuant to a group annuity contract, while at the same time holding that contract in trust for the exclusive benefit of members.

(ii) Insufficient Evidence of Intention to Establish a Trust

Does the reference in the Original Plan Text to holding the Policy (and all benefits payable thereunder) "in trust" create an irrevocable trust in favour of plan members, in the absence of other language indicating that it is to be held to the exclusive benefit of the Plan members? The Superintendent argues that it does since there is an express declaration of trust and clear intention to create a trust in section 18 of the Original Plan Text.

The Superintendent relied upon the following cases: *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* (1994), 5 C.C.P.B. 97 (N.S. C.A.) ("*LaHave*"); and *Bull Moose Tube Ltd. v. Ontario (Superintendent of Pensions)* (1994), 3 C.C.P.B. 187 (Ont. Ct. (Gen. Div.)) ("*Bull Moose Tube*") in support of his position that the wording of section 18 of the Original Plan Text is sufficient evidence of an intention to create a trust.

In the *LaHave* case, the Nova Scotia Court of Appeal was called upon to interpret the following language of an insurance policy under which plan benefits were funded:

The employer shall hold this policy IN TRUST for the respective persons for whose benefit the pensions and other benefits are herein respectively expressed to be payable and the Employer shall not have any beneficial interest hereunder save only in respect of any sums which the Employer may become entitled pursuant to any express provision to that effect herein contained.

The Nova Scotia Court of Appeal concluded that the foregoing language was sufficient to make the plan in question subject to a trust. Similar language in an insurance contract was also held by the Ontario Court of Justice to make the plan subject to a trust in the *Bull Moose Tube* case. On the other hand, counsel for the City argued that the *LaHave* and *Bull Moose Tube* cases were distinguishable, and she urged us to accept that the language of the Original Plan Text more closely resembled the language of the pension plans considered in the following cases: *Howitt v. Howden Group Canada Ltd.*, (1999), 170 D.L.R. (4th) 423 (Ont. C.A.); *C.U.P.E. Local 185 v. Etobicoke (City)* (1998), 17 C.C.P.B. 278 (Ont. Div. Ct.) ("City of Etobicoke"); and *Central Guaranty Trust Co. (Liquidator of) v. Spectrum Pension Plan* (5) (1997), 149 D.L.R. (4th) 200 (N.S. C.A.) ("Central Guaranty").

In the *Howitt* case, the Ontario Court of Appeal was asked to consider whether a deposit administration contract issued by Standard Life in connection with the plan constituted evidence of an intention to create a trust. The relevant wording of the policy in question was as follows:

9. Discontinuance

...

> (b) This policy shall also be discontinued if the Person Assured shall, under the pension plans stated in the Schedule, purchase pensions for Employees from another Insurance Company, or deposit money with trustees for the payment of such pensions to Employees, without first obtaining the agreement of the Company to such an act; or if the Person Assured shall notify the Company of its desire to continue making further deposits hereunder. In any of such events, no further deposit shall be made into the Deposit Fund and the Company [Standard Life] will hold the Deposit Fund, in trust, either for the continued purchase of pensions for Employees in respect of whom deposits have been made or until the Person Assured requests the withdrawal of money from the Fund for transfer to another Insurance Company or to trustees. ... (at p. 435).

The Ontario Court of Appeal examined that language and held that it was not sufficient to constitute evidence of an intention to create a trust.

Prima facie, the City's arguments are persuasive. It is true that the courts in *Howitt*, *City of Etobicoke* and *Central Guaranty* all examined plans funded pursuant to insurance contracts and concluded that no trust existed. However, the wording of the insurance contracts in question in these cases did not contain the express declaration that the policy would be held in trust, as it did in the *LaHave* and *Bull Moose Tube* cases, and as it does in the Original Plan Text.

In fact, in *Howitt* the Ontario Court of Appeal had the opportunity to consider the *LaHave* and *Bull Moose Tube* decisions, and stated as follows (at p. 427):

> Here, the vehicle used to fund the pension plan was a contract and not a trust. Funding by way of a contract is not, however, necessarily inconsistent with the intention to create a pension trust: *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* (1994), 7 CCEL (2d) 245, 121 D.L.R. (4th) 67 (N.S.C.A) at 255; *Bull Moose Tube Ltd. v. Ontario (Superintendent of Pensions)* (1994), 3 C.C.P.B. 187 (Ont. C.T. (Gen. Div.)). *LaHave*, supra is distinguishable on the basis that although the funding was by contract there was an express declaration by the employer that the policy itself would be held in trust for the benefit of the employees. *Bull Moose*, supra, is similarly distinguishable. As in *LaHave*, the pension policy expressly provided that the employer held the policy in trust for the members.
>
> ...

In both cases the intention of the parties as expressed in the policy was clearly that the monies administered under the policy were to be held in trust. No such similar wording exists here.

In my view, a closer examination reveals that the language of section 18 of the Original Plan Text more closely resembles the language of the policy in the *LaHave* case (which was held to constitute evidence of an intention to create a trust) than it does the language of the policies considered in the *Howitt, City of Etobicoke* and *Central Guaranty* cases.

Accordingly, I accept the position of the Superintendent and find that the terms of the Original Plan Text constituted evidence of an intention to create a trust.

(iii) There is No Trust Fund

Counsel for the City argued that, despite the wording of section 18 of the Original Plan Text, there was no alienation of trust property in favour of the beneficiaries and therefore there could be no trust since there was no subject matter of the trust. The Superintendent argued that the Policy itself and any funds held thereunder formed the subject matter of the trust.

I have no difficulty in finding that the Policy and all monies held thereunder required to pay the specific benefits accrued under the terms of the Plan were an asset which forms the subject matter of the trust and therefore constitutes the trust property.

What is the subject matter of the trust (does the trust property include the surplus)?

I have had the benefit of reading the majority reasons. While we are in agreement on all matters up to this point, on this particular question I must respectfully disagree with their conclusions.

The City argued that any trust created under the Original Plan Text extended only to the Policy and not to the surplus in question that arose under the (separate) Deposit Contract. The Superintendent argued that the trust created under the Original Plan extended to all benefits or payments under the Plan, including any surplus payable under the terms of the Deposit Contract. The majority rely on the court decisions in *Bull Moose Tube* and *LaHave* as support for the proposition that the reference in the Original Plan Text to holding the Policy in trust was in essence a reference to holding the funding vehicle for the Plan, as amended or supplemented from time to time, in trust. I cannot accept this conclusion for the following reasons: the wording of the Original Plan Text does not support such a broad interpretation of the subject matter of the trust; in my view this reasoning runs contrary to established principles of trust law and the Supreme Court of Canada's reasoning in the *Schmidt* decision; and the *Bull Moose Tube* and *LaHave* cases can be distinguished from the present case. I will next elaborate on each of the foregoing reasons for departing from the majority decision.

> In the *Schmidt* case, the Supreme Court of Canada stated as follows with respect to the subject matter of a pension trust:
>
> If no trust is created, then the administration and distribution of the pension fund and any surplus will be governed solely by the terms of the plan. However, when a trust is created, the funds which form the corpus are subjected to the requirements of trust law. (at p. 654)
>
> ...
>
> In creating a pension plan and accompanying trust, an employer may be able to define the subject matter of the trust so as to include only the amount necessary to cover the employee benefits owed. However, very specific wording will be necessary before an ongoing surplus will be excluded from the operation of the pension trust. (at. p. 656)

Thus the Supreme Court of Canada confirmed that it is possible to limit the scope of a pension trust, provided that there is specific wording to this effect. This would appear to be just such a case. It is noteworthy that the Original Plan Text did not state that the pension fund under the Plan (as it may be constituted from time to time) was subject to a trust. Nor did it refer to the funding structure under the Original Plan Text as a "trust fund". Instead, the express declaration of trust under the Original Plan Text related only to "the group policy and all benefits payable thereunder". The terms of the Original Plan Text and the Policy were clear that the "benefits payable" were only those specific amounts of pension benefits accrued each year, and not any "surplus" or "excess assets".

As a result, I am of the view that the language of the Original Plan Text was clear in that the subject matter of the trust created under the Plan was the Policy (and any benefits payable thereunder) and not the replacement Deposit Contract in effect after 1978 or the surplus which arose under the Deposit Contract.

I also am unable to conclude that a reference to holding in trust one particular funding vehicle under a pension plan means that any and all subsequent and separate funding vehicles must also be subject to that trust because they are held under the same plan. This would only be the case if the plan were to provide that that pension fund held under the plan from time to time is held in trust, which is not the case here. The logical conclusion to the majority's reasoning is that once a plan is funded pursuant to a trust, the entire pension fund must always be a trust, and nothing short of terminating the plan could put an end to this. This runs contrary to well-established common law trust principles which allow a settlor to define (restrict the scope of) the trust property. It would also mean that an employer could not create two separate funds within a pension plan, each with differing beneficiaries and terms.

In the *Schmidt* case, the plan in question was the result of a merger of two prior pension plans and funds. One of the prior plans was impressed with a trust and the other, an insurance contract, was not. I note that in those circumstances the Supreme Court of Canada did not conclude that a reference to the pension

fund being held in trust in one of the prior plans meant that all assets held in the pension fund of the merged plan were subject to that trust. Indeed, the court came to the exact opposite conclusion. In my view traditional trust law principles stand for the proposition that a trust fund cannot be revoked by the settlor except in limited circumstances but does not preclude the settlor of a trust from creating an entirely new and separate trust fund which is not subject to the terms of the original trust.

I also believe that the *LaHave* and *Bull Moose Tube* cases are distinguishable from the present case.

In the *LaHave* case, prima facie it appears as though the court implicitly concluded that a trust extended to a new funding vehicle (an investment contract), even though the reference in the original plan was to a predecessor group annuity policy. Upon closer examination, however, it appears that the issue of whether funds held under a separate replacement contract were subject to the trust was simply not argued. When examining the subject matter of the trust, the court in *LaHave* simply concluded that the policy (i.e. the original group annuity policy) and all monies paid pursuant to such policy, including surplus, formed the subject matter of the trust. The court did not state that the separate investment contract formed the subject matter of the trust. We are left to speculate whether the surplus in question in that case arose under the original group policy or the replacement investment contract, since the issue was not explicitly addressed by the court nor does it appear to have been argued before the court. Indeed, in the *LaHave* case it could also be reasonably concluded that the original group annuity policy was never cancelled or replaced by the new investment contract, it was simply an amendment to the original funding structure. In *Bull Moose Tube*, a case which predates *Schmidt*, the court implicitly concluded that a replacement policy was subject to a trust even though the reference to the trust was in the original policy. Once again, however, the court did not explicitly address this issue. Indeed, it does not appear that the issue of whether the trust extended to the replacement policy was even argued before the court in that case. Instead, it appears that the original policy was cancelled and all assets thereunder were transferred to a new policy and the employer simply argued that the trust did not extend to surplus, it only applied to basic benefits. This is a very different situation than the case before us.

In neither of the foregoing cases was there a clear change in the funding vehicle combined with changes (improvements) to the benefits under the pension plan, as there was in 1978 under the Plan. When the Deposit Contract was created, the Plan benefits were improved to a "final average earnings" formula. This signalled a clear intention to create a new pension benefit structure, which included a new (non-trust) funding arrangement.

Finally, I note that both the *LaHave* and *Bull Moose Tube* cases involved "all or nothing" disputes between the employer and the employees over who owned surplus. They did not involve an amicable surplus sharing arrangement, as here, where all parties agreed to the sharing of surplus and the only issue was whether the plan

provides for that payment within the meaning of section 78 of the PBA. Nor did those courts have representations from retirees supporting a negotiated surplus sharing arrangement.

At the hearing, the Tribunal was presented with a Letter of Comment signed by several of the retirees under the Plan. The Letter of Comment verified that an agreement to share surplus was reached between the City and the members and former members in 1998 and that such agreement was overwhelmingly ratified by members.

Letter of Comment goes on to note:

Since that time three more years have elapsed with no settlement and no indication that one is close at hand. With each passing year, more and more retirees are dying without being able to enjoy some of the benefits of their hard work after having dedicated themselves to careers in Public Service.

We wish to encourage the Tribunal to gather the relevant facts, thoroughly review them and render a decision expeditiously. Time is of the essence!

In reaching my decision, I have taken into account the Letter of Comment and I acknowledge the general sense of exasperation felt by retirees in this Plan who have not benefited from surplus while this matter has remained unresolved for several years.

Accordingly, I find that the trust established by the Original Plan Text applied only to the Policy and the specific benefits accrued under the Policy. The surplus in question in this case arises under the Deposit Contract, not the Policy. In fact, the Policy (and all benefits payable thereunder) was fully paid-up effective January 1, 1978 and the Deposit Fund was cancelled. Neither of the parties argued that there should be any "tracing" of trust assets from the Policy into the Deposit Contract. The surplus in question cannot, therefore, be part of the trust created under the Original Plan Text. In light of the foregoing, I am of the view that contract law principles should be applied to the determination of surplus entitlement under the historical Plan documents. Using these principles, I can see no prior Plan language which would have invalidated the provisions of the 1978 Plan Text. As a result, I have concluded that the Plan provides for payment of surplus to the employer within the meaning of paragraph 79(3)(b) of the Act.

Disposition

As a result, I have concluded that the Applicant has satisfied the requirements of section 78 of the Act, and I would direct the Superintendent not to carry out the proposed order in the Notice of Proposal dated August 23, 2001.

Dated at Toronto, Ontario this 24th day of June 2004.

Paul W. Litner
Member of the Tribunal and
Chair of the Panel

REASONS FOR DECISION OF MR. MCNAIRN AND MR. ERLICHMAN

We are in agreement with the Analysis in Mr. Litner's Reasons for Decision up to the heading "What is the subject matter of the trust (does the trust property include the surplus)?". It is at that point that we part company.

We adopt the statement of the Background in this matter set out in those Reasons and, for convenience, will use the capitalized terms therein as having the same defined meanings for the purposes of these Reasons.

Does the Trust Property Extend to the Deposit Contract?

In our view, the property that is impressed with a trust cannot be confined to the original Policy and its benefits even though section 18 of the Original Plan Text describes the subject of the trust as "the group policy and all benefits payable thereunder", an apparent reference to the policy then in place with the Standard Life Assurance Company, i.e. the original Policy that was subsequently supplemented, as a funding vehicle for the amended Plan, by the Deposit Contract. The decisions of the Ontario Court (General Division) in *Bull Moose Tube Limited v. Ontario (Superintendent of Pensions)* (1994), 3 C.C.P.B. 187, and of the Nova Scotia Court of Appeal in *LaHave Equipment Ltd. v. Nova Scotia (Superintendent of Pensions)* (1994), 5 C.C.P.B. 97, support this conclusion.

In *Bull Moose Tube*, the intention to create a trust was evident from the terms of a group annuity policy that served not only as the funding vehicle for a pension plan but as the plan text, setting out the terms of the pension plan arrangements funded by the policy. The policy stated that the employer shall hold "this policy IN TRUST for the respective persons for whose benefit the pensions and other benefits are herein expressed to be payable ...". However, the policy was later cancelled and replaced by a policy with a different insurer under which there was a surplus at the wind up of the plan. The employer sought a declaration from the court that it was entitled to that surplus. The court refused the declaration, a result that carries the implicit conclusion that the new policy was subject to the trust even though the relevant trust language was referable to the original policy. Although it is not clear from the reasons for decision whether the new policy contained trust language similar to that of the original policy, the court refers only to the trust created by the original policy. It then finds that a series of amendments to both policies purporting to give the employer entitlement to surplus were without effect having regard to that trust.

In *LaHave*, the trust language was the same as that in *Bull Moose Tube*. It was also contained in a group annuity policy that served the same dual roles (i.e. the funding vehicle and the source of the plan text) as the policy in *Bull Moose Tube*. By the time entitlement to surplus became an issue, the original policy had been replaced as the funding vehicle for the plan by an "investment contract", which we take to be a deposit administration agreement similar in nature to the Deposit Contract in the present case. Although the investment contract purported to replace the original policy, it did not set out the complete plan text.

The Nova Scotia Court of Appeal came to the same result in *LaHave* as the Ontario court had reached in *Bull Moose Tube* – a refusal of the employer's application for a declaration of entitlement to plan surplus. Once again, there is an implicit conclusion that the original trust extended to the new funding vehicle - in *LaHave* an investment contract - even though the trust language in the original group annuity policy was referable to the latter policy. The court declined to give effect to a provision in the investment contract permitting the payment of surplus to the employer, apparently on the basis that the trust for the benefit of plan members in the original policy, which was found to extend to surplus, persisted in respect of the investment contract and, effectively, trumped the provision of that contract permitting payment of surplus to the employer.

The City relied on another, more recent decision of the Nova Scotia Court of Appeal, namely *Central Guaranty Trust Co. (Liquidator of) v. Spectrum Pension Plan (5)* (1997), 149 D.L.R. (4th) 200. In that case, the court also had to determine whether there was a trust for plan members in respect of the surplus under a pension plan. In doing so, the court said that the proper starting point was to look at the "entirely new plan", funded by a deposit administration contract, under which a surplus had apparently been generated, that had replaced an earlier group annuity policy which set out the terms of the original plan (see at p. 248 and also at pp. 221, 247, 250 and 256-257). The "new plan" provided that on termination surplus would be paid to the employer, which was inconsistent with a trust in respect of the surplus for the benefit of plan members. The present case is distinguishable in that the Plan we have to consider continued, in amended form, through the addition of the Deposit Contract, as a funding vehicle for the Plan, and was not replaced.

The court in *Central Guaranty* also considered at length the question of whether there was a trust in respect of the original group annuity policy or, as the court put it, in respect of the monies paid by way of premium to the insurer under that policy, concluding that there was no such trust. In the present case, we have found that there was sufficient evidence of an intention to create a trust in respect of the original Policy (see Mr. Litner's Reasons for Decision under the heading "Trust or Contract?").

We conclude, on the basis of the relevant judicial authorities, that the property that is subject to the trust established by section 18 of the Original Plan Text is the original Policy, as amended from time to time, and any policy benefits payable thereunder, as well as any other property that is substituted for or supplements the Policy as a source of funding for the Plan from time to time, such as the Deposit Contract.

If one were to take a narrower view of the extent of trust property than we have taken, would a trust in respect of an insurance policy then be inapplicable to:

> (a) the policy if it was amended by endorsement and, therefore, ceased to correspond precisely with the policy that was the subject of the original trust declaration?

(b) a deposit administration feature established, as an addition to a group annuity feature, by way of endorsement to the policy that was the subject of the original trust declaration?

If the answer to (a) is "yes" (i.e. the trust is inapplicable to the amended policy), this would make for easy avoidance by an employer of an otherwise irrevocable trust in respect of an insurance policy, held for the benefit of members of a pension plan, by requesting that the insurer issue an endorsement to the policy. We think that it cannot logically be the case that any endorsement would automatically take the policy out of the trust. The answer to (a) must, therefore, be "no" (i.e. the trust is applicable to the amended policy). If so, it would be difficult to justify a different answer to (b), just because of the nature of the endorsement. If the answer to (b) is, therefore, "no" (i.e. the trust is applicable to the deposit administration feature established by endorsement to the policy), once again it would be difficult to justify a different answer if the deposit administration arrangement were to be effected through the vehicle of a new policy, as in the present case. Logic, therefore, leads us to the same position that we have reached in the previous paragraph on an analysis of the decisions in *Bull Moose Tube* and *LaHave*, i.e. that a declaration of trust in respect of an insurance policy funding a pension plan extends to property substituting for or supplementing that policy from time to time.

Does the Trust Property Extend to Surplus?

In *Schmidt v. Air Products Canada Ltd.* (1994), 115 D.L.R. (4th) 631, the Supreme Court of Canada observed that in creating a pension plan and accompanying trust, "an employer may be able to define the subject-matter of the trust so as to include only the amount necessary to cover the employee benefits owed", but that "very specific wording will be necessary before an ongoing surplus will be excluded from the operation of the pension trust" (at p. 656). There is no such specific wording in the Plan documents in the present case. Indeed, the fact that the pension trust relates to an insurance policy, rather than an investment fund, means, logically, that the trust extends to the full value of the policy, without distinction between the portion of that value required to satisfy pension benefits and the portion that is surplus to that requirement. This position is reinforced by the fact that the trust is also expressed to cover all benefits payable under the policy. Therefore, it is a matter of indifference whether those policy benefits should prove to be more than sufficient to satisfy the pension obligations under the Plan; they are all to be held in trust for the members of the Plan. In *LaHave*, the Nova Scotia Court of Appeal likewise concluded, on similar facts, that the trust extended to surplus, although this was based on its view that the unqualified statement that the policy is held in trust meant that all of the monies paid by way of premiums pursuant to the policy form the subject matter of the trust (at p. 108). As noted above, we subscribe to a different view as to the subject matter of the trust in the present case.

The City maintained that the trust should not be taken to extend to surplus because the

nature of the initial Policy was such that no policy benefits in excess of what was required to fund pension obligations could be generated under the Policy. Assuming that to be true, the Original Plan Text could be amended and the Policy supplemented with an additional funding vehicle in such a way that surplus could be generated, which is what in fact happened in the present case. Consequently, there is no sufficient reason for limiting the trust to the amount necessary to cover pension obligations to Plan members.

Once it is found that there is an intention to create a pension trust, such as we have found in the present case, there is no need to establish an intention to extend that trust so as to cover surplus before the trust will have that reach. Such an onus would be inconsistent with the statement of the Supreme Court of Canada in *Schmidt*, noted above.

Who are the Beneficiaries of the Trust?

It is clear that the beneficiaries of the trust established by the Plan are the members of the Plan as this is expressly stated in section 18 of the Original Plan Text. Although the trust is subject to the qualification that the employer "will be credited as a reduction in future premiums with any sum paid [by the insurer] in excess of the benefits allowed to a withdrawing member", this is akin to a contribution holiday in respect of a pension fund that is subject to a trust. As is evident from *Schmidt*, the availability of such a contribution holiday is not inconsistent with Plan members' entitlement to surplus (at p. 665).

Was the Trust Effectively Revoked?

The 1978 Plan Text provided, for the first time, that any surplus assets, remaining after the liabilities for all benefits accrued under the Plan are met, shall be returned to the City or used as it may direct. This amended Plan Text will only be effective in the face of the trust language of the Original Plan Text if the City expressly reserved a power of revocation of the trust at the time the trust was created (see *Schmidt*, at p. 657). There was no such reservation in the Original Plan Text. However, the City argued that as it had the power to adopt the Plan by by-law (which it did), this carried with it the power to revoke the by-law, and therefore the trust established by the Plan, by virtue of subsection 28(g) of the Interpretation Act, R.S.O. 1990, c. I-11. The decision of the Ontario Court of Appeal in *Markle v. Toronto (City)* (2003), 63 O.R. (3d) 321 (application for leave to appeal to the Supreme Court of Canada dismissed on November 6, 2003), provides a complete answer to this argument. The court said, in the course of its decision, that this provision of the Interpretation Act "confirms a power to revoke a by-law, but does not authorize the revocation of a trust created by a by-law" (at p. 331). The provision of the 1978 Plan Text for the payment of any surplus to the City is, therefore, without effect as it is not authorized by an appropriate power to revoke the trust in respect of that surplus.

Disposition

Since we have concluded that the Plan does not effectively provide for payment of surplus to the City on the wind up of the Plan, in the

sense of paragraph 79(3)(b) of the Act, we direct the Superintendent to carry out the proposal contained in the NOP, that is to refuse to consent to the City's surplus withdrawal application, dated August 15, 2000, in respect of the Plan.

DATED at Toronto, Ontario this 24th day of June, 2004.

Colin McNairn,
Vice Chair of the Tribunal and Member of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

APPENDIX "A"

FST File #POI72-2001

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P .8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to s. 78(1) of the Act submitted by the City of Kitchener for payment of surplus to the Employer dated July 17,2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:
THE CORPORATION OF THE CITY OF KITCHENER
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

ORDER

WHEREAS the Respondent has agreed by letter dated May 9,2002 that the Applicant has satisfied the requisite level of consent required under section 8 of Regulation 909;

ON READING the Consents of the parties by their counsel, filed and on hearing the submissions of counsel for the Applicant and the Respondent:

THIS TRIBUNAL ORDERS that the Applicant has demonstrated that it has obtained the requisite level of consent required under section 8 of Regulation 909.

DATED at Toronto, this 14th day of July 2003.

Paul Litner,
Member of the Tribunal and Chair of the Panel

Martha Milczynski,
Chair of the Tribunal and Member of the Panel

Louis Erlichman,
Member of the Tribunal and Panel

FST File #POl72-200l

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to s. 78 (1) of the Act submitted by the City of Kitchener for payment of surplus to the Employer dated July 17, 2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No.239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:
THE CORPORATION OF THE CITY OF KITCHENER
Applicant
-and -
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

CONSENT

I consent to the order in the form and content as attached hereto as Appendix " A".

Date: July 11, 2003

Counsel for the City of Kitchener

FST File #PO172-200l

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P .8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997) c.28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to consent to the application pursuant to 5.78 (1) of the Act submitted by the City of Kitchener for payment of surplus to the Employer dated July 17,2000 in respect of The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration No.239475 (the "Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:
THE CORPORATION OF THE CITY OF KITCHENER
Applicant
-and-
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

CONSENT

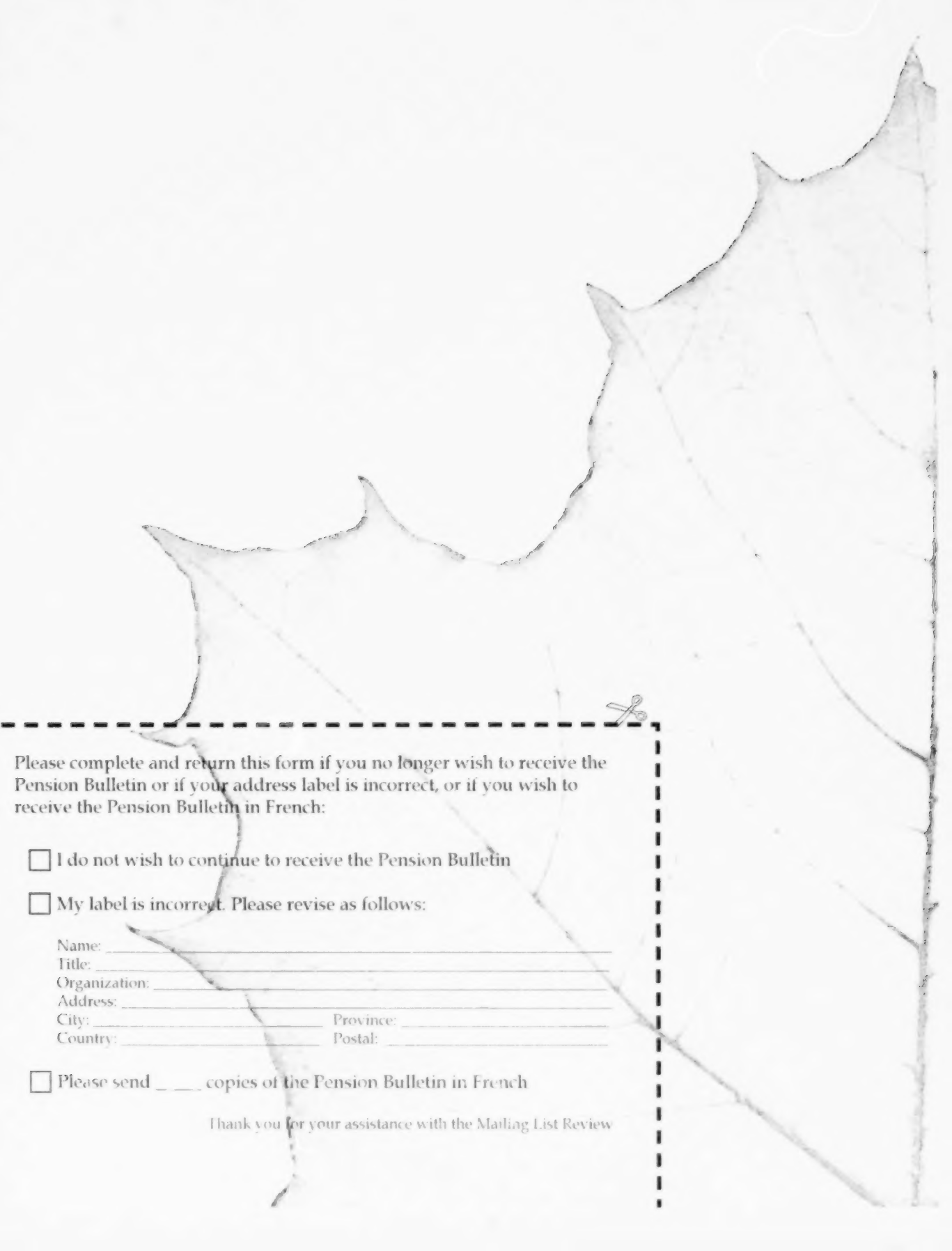
I consent to the order in the form and content as attached hereto as Appendix "A".

Date: July 10, 2003

Counsel for the Superintendent of Financial Services

PLACE
STAMP
HERE

The Editor, *Pension Bulletin*
Financial Services Commision of Ontario,
5160 Yonge Street, 17th Floor
Box 85
North York, Ontario
M2N 6L9



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